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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 242

JORGE I. ROSSO AND WIFE CARMEN DESCARTES,
APPELLANTS,

v.

COMMONWEALTH OF PUERTO RICO

ON APPEAL FROM THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

WALTER L. NEWSOM, JR.
P. O. Box 2152
San Juan, Puerto Rico 00903
BROWN, NEWSOM & CORDOVA
Attorneys for Appellants

JAMES B. DONOVAN
Of Counsel

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INDEX

	Page
Opinions Below	2
Jurisdiction	2
Questions Raised	3
Statement of the Case	5
The Questions Are Substantial	28
Conclusion	37
Appendix A	
Findings, Conclusions and Statement of Superior Court	38
Judgment of Superior Court	81
Appendix B	
Opinion of Supreme Court of Puerto Rico	82
Judgment of Supreme Court of Puerto Rico	138
Order Denying Rehearing	139
Appendix C	
The Land Administration Act	140

Table of Citations

Cases.

Abbot Dairies, Inc. v. *Armstrong,* 102 A 2d 372, 14 N. J. 319	33
A. M. Holter Hardware Co. v. *Boyle,* 263 F. 134, *app. dismissed* 42 S. Ct. 91, 257 U.S. 666, 66 L. ed. 425	33
Berman v. *Parker,* 75 S. Ct. 98, 348 U.S. 26, 99 L. ed. 27	30
Board of Education v. *Baczewski,* 340 Mich. 265, 65 N.W. 2d 810	31
City of Cincinnati v. *Vester,* 30 S. Ct. 360, 281 U.S. 439, 74 L. ed. 950	30
Gordon v. *Bowls,* 153 F. 2d 614, *cert. den.* 66 S. Ct. 1350, 328 U.S. 858, 90 L. ed. 1629	33
Nebbia v. *People of the State of New York,* 54 S. Ct., 505, 291 U.S. 502, 78 L. ed. 940	33

Page

Ohio Bell Telephone Co. v. *Public Utilities Com.*, 57 S. Ct. 724, 301 U.S. 292, 81 L. ed. 1093 33

Ohio Valley Water Co. v. *Ben Avon Borough*, 40 S. Ct. 583, 253 U.S. 287, 64 L. ed. 908 33

O'Neil v. *Bd. of Commr's*, 3 Ohio State 2d 53, 209 N.E. 2d 393 30

People of Puerto Rico v. *Eastern Sugar Associates*, 156 F. 2d 316, *Cert. den.* 67 S. Ct. 190, 329 U.S. 771, 91 L. ed. 664 30

Puerto Rico v. *Rupert Hermanos*, 63 S. Ct. 711, 315 U.S. 637, 86 L. ed. 1081 3

Robbins v. *Webb Cut Rate Drug Store*, 16 So. 2d 121, 153 Fla. 822 33

Sociedad de Mario Mercado e Hijos v. *Commonwealth of Puerto Rico*, 86 S. Ct. 1064, 383 U.S. 412, 15 L. ed. 2d 840 3

United States v. *Miller*, 63 S. Ct. 276, 317 U.S. 369, 87 L. ed. 336, *reh. den.* 63 S. Ct. 557, 318 U.S. 798, 87 L. ed. 1162 ..... 18, 34

Yakus v. *United States*, 64 S. Ct. 660, 321 U.S. 414, 88 L. ed. 834 36

Zemel v. *Rusk*, 85 S. Ct. 1271, 381 U.S. 1, 14 L. ed. 2d 179, *reh. den.* 86 S. Ct. 17, 382 U.S. 873, 15 L. ed. 2d 114 37

Statutes

The Land Administration Act 2, 22

Laws of Puerto Rico, 2nd Reg. Sess. 1962 ..... 3, 13, 36

23 LPRA 311 (a) to (s), Sections 12, 13 and 14 ..... 2, 3

Sections 4 and 5(a) of the General Law of Eminent Domain (Laws of Puerto Rico 1948, p. 242 and Laws of Puerto Rico 2nd and 3rd Spec. Sess., pp. 88-92; Code of Civil Procedure, 32 LPRA 2905 and 2907) 2, 22

Page

The Puerto Rico Planning and Budget Act, as amended:
Section 24 (Laws of Puerto Rico 2nd Reg. Sess. 1951, pp. 1234-1236; 23 LPRA 25) 7
Section 10 (Laws of Puerto Rico 1955, pp. 1112-1114; 23 LPRA 10) 7
Section 10 (Laws of Puerto Rico 1957, pp. 493-495; 23 LPRA 10) 20
Section 11 (Laws of Puerto Rico, 2nd Spec. Sess. 1949 and 2nd Reg. Sess. and 4th Spec. Sess. and Reorg. Plans 1950, pp. 911-912; 23 LPRA 11) 20
Section 23 (Laws of Puerto Rico 1951, pp. 1234-1236; 23 LPRA 24) 20
Section 24 (Laws of Puerto Rico 1951, pp. 1236-1238; 23 LPRA 25) 20
Section 30(a) to (d) (Laws of Puerto Rico, 2nd Reg. Sess. 1962, pp. 48-50; 23 LPRA 30(a) to (d) 20
Section 43 (Laws of Puerto Rico, p. 532; 23 LPRA 43) 8, 20
Section 9 (Laws of Puerto Rico 1949, 4th Reg. Sess. 1960, pp. 400-401; 23 LPRA 9) 20
Section 8 (Laws of Puerto Rico, 1st Reg. and 1st Spec. Sess. 1957, pp. 491-493; 23 LPRA 8) 13
Section 16 (Laws of Puerto Rico, 2nd Reg. and 2nd Spec. Sess. 1958, pp. 17-18; 23 LPRA 16) 13
Section 22 (Laws of Puerto Rico, 2nd Spec. Sess. 1949, 2nd Reg. and 4th Spec. Sess. and Reorg. Plans 1950, pp. 918-920; 23 LPRA 23) 18
Public Law 87-189 of August 30, 1961; 75 Stat. 417; 28 USC 1258(2) 3
Public Law 600, 81st Cong., Act of July 3, 1950, c. 446; 64 Stat. 314; Title 1, 2 — 3 LPRA p. 137 5
Public Law 447 of 82nd Cong.; J.R. of July 3, 1952, c. 567; 66 Stat. 327; Title 1, 2 — 3 LPRA pp. 144-145 5
Federal Highway Act of 1956, Sec. 110(a) 30

Page

Miscellaneous

23 Rules and Regulations of Puerto Rico 36(a) 7
23 Rules and Regulations of Puerto Rico 10-1, et seq., 43-1, et seq. and 9-1, et seq. 20
4 *Nichols on Eminent Domain,* 3rd Ed. Sec. 12.3111, p. 96 33
Operation Metro: A Case Study of the Power Structure in Action and the Crisis in the Planning Process in Puerto Rico, by Federico Cordero, Revista Juridica de la Universidad de Puerto Rico, Vol. XXXII, No. 3, 1963, pp. 354, 366; 375-376 8

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v.

COMMONWEALTH OF PUERTO RICO

ON APPEAL FROM THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

Jurisdictional Statement

Appellants appeal from the final order and judgment of the Supreme Court of Puerto Rico entered January 22, 1968, denying Appellants' petition for rehearing, and its judgment entered December 7, 1967, reversing the judgment which vacated the order vesting title in and ordering delivery of possession of the properties to the Commonwealth of Puerto Rico and dismissing the complaint for condemnation made by the Superior Court of Puerto Rico, San Juan Section; and submit this Statement that the

Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

Opinions Below

The opinion (Statement of Case, Findings of Fact and Conclusions of Law) of the Superior Court of Puerto Rico is not reported nor has the Opinion of the Supreme Court of Puerto Rico yet been reported in the English language. The said opinions, translated into English, are set forth in the Appendix, Infra.

Jurisdiction

This suit was brought for condemnation of Appellants' lands by the Commonwealth of Puerto Rico, represented by its Acting Governor, at the request of the Land Administration of Puerto Rico, a government corporation and instrumentality, for the use and benefit of the Land Administration, under the alleged authority of Section 12, 13 and 14 of the Land Administration Act (Laws of Puerto Rico, 2d Reg. Sess. 1962, pp. 11 to 29; 23 LPRA 311, k, l, and m); Sections 4 and 5(a) of the General Law of Eminent Domain (Laws of Puerto Rico 1948, p. 242 and Laws of Puerto Rico, 2d and 3rd Spec. Sessions pp. 88-92; Code of Civil Procedure, 32 LPRA 2905, 2907) and the Resolution of the Planning Board of Puerto Rico of January 23, 1963 empowering the Land Administration to acquire by purchase or condemnation vacant urbanizable lands in the Metropolitan Area of San Juan, and entitled Scope of the Project. (Exhibit 2).

It was alleged by Appellants that the Puerto Rican statute (Land Administration Act) as applied to the facts of this case was repugnant to the Constitution of the United States and invalid. The Supreme Court of Puerto

Rico decided the question in favor of the validity of the statute and the condemnation thereunder, and entered judgment December 7, 1967. Appellants' timely petition for rehearing was denied by said court February 2, 1968. Notice of Appeal was filed by Appellants February 27, 1968 in the Supreme Court of Puerto Rico. By order of Mr. Associate Justice Abe Fortas of this Court April 19, 1968 the time for docketing this case on appeal was extended to and including July 1, 1968. Thus the case involved a judgment of the Supreme Court of Puerto Rico in a case where the validity of a Commonwealth statute was drawn in question as being repugnant to the Constitution of the United States and the decision was made in favor of its validity. This Court, therefore, has jurisdiction under Public Law 87-189 of August 30, 1961, 75 Stat. 417, 28 USC 1964 1258(2). (See Rule 61 of the Revised Rules of the Supreme Court, 28 USCA 61). Since the enactment of this section only one appeal appears to have been taken to this Court from the Supreme Court of Puerto Rico, and it was dismissed for lack of jurisdiction per Memorandum Opinion (*Sociedad de Mario Mercado e Hijos* v. *Commonwealth of Puerto Rico,* 86 S. Ct. 1064, 383 U.S. 412, 15 L. ed. 2d 840). For previous law governing appeals to the Court of Appeals from the Supreme Court of Puerto Rico see *Puerto Rico* v. *Rupert Hermanos,* 62 S. Ct. 771, 315 U.S. 637; 86 L. ed. 1081.

The statute involved (Laws of Puerto Rico, 2d Reg. Session 1962, pp. 21 to 25; 23 LPRA 311 a to r, effective May 16, 1962) is lengthy, and the text thereof is set forth in the Appendix, infra.

Questions Raised

1. Whether, since Appellants' lands were not taken for any specific present but for an undetermined and unspeci-

fied use in the future, and there was no public necessity for the taking, said taking was arbitrary and capricious and in violation of due process of law guaranteed by the Fifth and Fourteenth Amendments to the Constitution.

2. Whether, since Appellants' lands were not vacant, and Appellants were not engaged in land speculation, land monopolization, withholding lands from development or impeding urbanization of lands suitable therefor, but were developing their lands integrally with surrounding areas in conformity with the applicable law and regulations for the uses and purpose determined by the Commonwealth Government to be the best use and purpose for said lands, and in pursuance to the declared public policy of the Commonwealth to provide industrial, commercial, and housing development, the condemnation of said lands was not authorized by the Land Administration Act nor the Planning Board and was therefore in violation of due process of law guaranteed by the Fifth and Fourteenth Amendments.

3. Whether, in so far as the Land Administration Act permits the sale of condemned lands to developers with the restriction that sales by them of the units formed and constructed by them to the public shall be made at prices "limiting through a proper formula their profits with respect to the land and all other costs" of the development, it permitted the fixing of prices which would be arbitrary, discriminatory and demonstrably irrelevant to the policy adopted by the Legislature, not in fair and open competition with units of the same general class formed and constructed by others, without procedural due process, in violation of due process of law and in denial of the equal protection of the laws guaranteed by the Fifth and Fourteenth Amendments to the Constitution.

4. Whether, the Land Administration Act delegates legislative powers to the Land Administration since no

sufficiently basic standards and safeguards, definite and certain policy and rule of action for guidance to administer said law is provided therein or otherwise and since the Act vests in the Land Administration discretion which is arbitrary and power to determine what the law should be, in violation of the constitutional principle of separation of powers guaranteed by the Constitution and by Article III, Section I of the Constitution of Puerto Rico adopted pursuant to the requirements of Section 3 of Public Law 600, 81st Congress (Act of July 3, 1950, c. 446; 64 Stat. 314, Titles 1, 2 - 3 LPRA, p. 137) and approved by Joint Resolution of the Congress (Public Law 447; 82nd Congress, J. R. of July 3, 1952, c. 567; 66 Stat. 327, Titles 1, 2 - 3 LPRA, pp. 144-145).

Statement Of The Case

Defendant Rosso, an engineer, building contractor and urban developer, during the first half of 1960 purchased three parcels of land in the Bayamon-Guaynabo Area within the generally recognized large Metropolitan Area of San Juan, which with a parcel transferred to him from a wholly owned corporation in 1962 made up the area sought to be condemned in these proceedings. Rosso also wanted to purchase two other adjoining parcels but failed to do so. One of them, the Quiñones property, was acquired by a competing builder and made into Caparra Gardens, a private housing development. These properties were contiguous, surrounded by private housing developments, completed or under construction, and Rosso acquired them with the intent and purpose of building a private housing and industrial and commercial development to be known as San Jorge Residential Park, and at and before the time of acquisition so informed the sellers, his bankers, his attorneys and others. The deed of acquisition of some of

the parcels contained provisions indicating his purpose, and he obtained credit from his bankers for purchase and assurance of financing the proposed development up to the time of the constitution of F.H.A. mortgages on the units constructed at the time of their sale.

He cleared the land of growing sugar cane, had a survey and a topographical map made, began rough grading and ditching of the land for drainage, and by September 26, 1960 had prepared a preliminary plan of his projected urbanization entitled Feasibility Layout. (Ex. M - Letter of June 20, 1962 from Mejias to Viscasillas). A plant for extraction of gravel and sand from and along the Bayamon River that traversed the lands was constructed and put in operation; a concrete batching plant, a warehouse for storage of construction materials and shops for repair and maintenance of machinery and equipment were built and put into operation in the lands.

As required and subsequently approved by the Planning Board of Puerto Rico, he reached agreement in December 1960 with the builders of Caparra Gardens, the private housing development to the north of his lands under construction, for the integration of that and his proposed development, according to his preliminary plans therefor which he had formulated.[1] Rosso also brought about the relocation of power lines by the Puerto Rico Water Resources Authority to obviate interference with his development, obtained the consent of the Public Works Department to lower the gradient of the Lomas Verdes expressway to pass through his lands so as to be in accord with

[1] This agreement embraced a drainage canal from Caparra Gardens over his land to the Bayamon River, a water line from the proposed 30 inch main over his land, and the transfer to him of lands by Caparra Gardens along his northern boundary. In the Planning Board's final approval of Caparra Gardens extensions of the two main avenues of Caparra Gardens through Rosso's land were provided for and the Board referred to his development as the San Jorge Project.

the gradient of his proposed streets which work he performed at his own expense; proposed to the Puerto Rico Aqueduct and Sewer Authority the relocation of a proposed water main so as to pass along his projected street and an increase in its size at an expense to him of some $150,000.00, and gave notice in March 1962 to the Porto Rico Telephone Company so that telephone service might be provided for his development.

Around August 1961 Rosso had gone to the Planning Board for consultation with its technicians and orientation with respect to his development.[2] This informal consultation of Technicians of the Board by developers was and is the customary practice.

In Puerto Rico the Planning Board, a part of the Office of the Governor, has absolute power. Section 24 of the Puerto Rico Planning and Budget Act (Laws of Puerto Rico, 2d Reg. Sess. 1951, pp. 1234 & 1236; 23 LPRA 25) provides that:

> ". . . . no subdivision of land within Puerto Rico shall be made, and no plat of a subdivision of land shall be received for recording, no building shall be erected, nor be permitted to be erected, . . . and no

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[2] The Puerto Rico Planning and Budget Act provides that "To persons desiring to subdivide their land, the Board shall furnish assistance in the planning of the layout and development of their subdivisions." (Law of Puerto Rico 1955, pp. 1112 and 1114; 23 LPRA 10) and Section 10-36 of its Subdivision Regulations, (23R and RPR10-36(a)) requires the Board to

> ". . . . assist the subdivider in planning the arrangement and development of the subdivision, by preparing or cooperating in the preparation of a preliminary layout or preliminary design of the general arrangement and nature of the subdivision, in the way in which, in its opinion, would be most convenient and best adapted to the local conditions and characteristics of the area to be subdivided, and in accordance with the provisions of (the Land Subdivision Regulations)."

permit issued, except, and to the extent, that the same shall comply with said regulations and shall have been finally approved according thereto by the Board; . . .".

The planning function of the Board, it was said, had been neglected, and on July 11, 1961 the Chairman of the Board announced that the Board would postpone the approval or rejection of all preliminary housing projects in the San Juan Metropolitan Area until a "global solution to remedy the shortcomings of urban growth was developed". (See *Operation Metro: A Case Study of the Power Structure In Action And The Crisis In The Planning Process in Puerto Rico,* by Federico Cordero, Revista Juridica de la Universidad de Puerto Rico, Vol. XXXII, No. 3, 1963, pp. 354, 366).

By Resolution of February 15, 1962 new Guide Lines were adopted by the Board and by Act No. 25 of June 8, 1962 (Laws of Puerto Rico, Second Reg. Sess. 1962, pages 48-50, 23 LPRA 30(a)(b)(c)(d)(e) and (f), the Board was authorized to adopt regulations requiring the vicinal facilities embraced in the new guide lines.[3]

Nine days after presentation of the bill in the Legislature on May 16, 1962 the Land Administration Act was approved.

On May 17, 1962 Rosso's bankers approved a loan to him of $600,000.00 to purchase construction machinery and equipment to be used in building the San Jorge Project and other works.

Although the Planning Board had suspended action on proposals for residential subdivisions, as aforesaid, on June 20, 1962 Rosso submitted to the Board plans for the industrial development of part of his said lands and asked

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[3] Such regulations were adopted May 9, 1963 and approved by the Governor May 17, 1963. (See Operation Metro, ibid, 375-376).

for the cooperation of the Board with respect thereto. (Ex. M—Letter of June 20, 1962 to Plannning Board).[4]

On August 31, 1962 the Land Administration wrote Rosso that it proposed to enter into, survey and study his lands. Following receipt of this letter the Executive Director of the Administration was visited and informed of Rosso's project. And on October 4, 1962 Rosso's representative (Roberto Martin) conferred with the Chairman of the Planning Board, and expressed Rosso's concern over the effect of said letter both on his organization and his project. The Chairman stated that as far as he knew the Administration had not decided to acquire any specific lands, and that his understanding was that if a project of development was in accord with the purposes of the Land Administration Law, there would be no reason for the Administration to intervene with respect thereto, and he suggested that Rosso explain his project to the said Executive Director. (Ex. M, Memo of October 5, 1962 from Roberto Martin to Rosso).

Accordingly on October 19, 1962 Rosso filed with the Planning Board a consultation with respect to the urbanization of all of his said lands, submitting therewith plans as to location, preliminary work done, topography, survey, an explanatory report, and preliminary plans prepared by Pedro A. Miranda and Associates, planning engineers.

And following the suggestion of the Chairman of the Planning Board, Rosso's representative conferred on November 6, 1962 with the Executive Director of the Land Administration and his assistants, and presented the particulars with respect to the proposed development, work

[4] This consultation was denied some three months later by letter of October 5, 1962 without notice to the Puerto Rico Economic Development Administration as required by law and practice, without any hearing, on grounds, among others, that the proposed use was not adequate and that vacant industrial properties existed in excess of demands. (Exs. X(a) and (b)).

and progress made thereon, and proceedings before the Planning Board, including the the consultations of June 20th and October 19, 1962. The Executive Director expressed surprise that the latter consultation had been filed and was pending action of the Planning Board, and he stated that the interest of the Administration was the urbanization of the area, not that of acquiring Rosso's lands, and that if the Planning Board approved preliminary plans for Rosso's project the Administration would not be interested in their acquisition. Upon the request of Rosso's representatives, he said he would so inform the Chairman of the Planning Board. (Testimony of Mr. Parra Toro).

Rosso and his representatives on November 8, 1962 again met with the Chairman and alternate member of the Planning Board, and discussed with them the full particulars with respect to the proposed development. The Chairman asked Rosso about the type of houses he proposed to construct; Rosso answered that he proposed to construct houses that would be within the means of all, that is low cost housing. Minimum cost the Chairman said he would not specify because Puerto Rican Engineers had not agreed on that, but that the lower the cost the better. Rosso stated that he was agreeable to constructing a number of units of minimum cost, but he insisted that his consultation of October 19, 1962 be acted on, since under the regulations he could not file preliminary plans until that was done. The Chairman replied that since obviously the best use of his lands was such urbanization, there was no need to go through the proceedings of a consultation and that he could without more file preliminary plans.

Such plans prepared by Pedro A. Miranda and Associates were filed and submitted March 21, 1963 which were in accord with the new guide lines adopted by the Board up to that time, and represented and were in accord with an integrated development of the area. Prior to, during

and following their submission Miranda and Associates conferred with technicians of the Board and no objection to the plans were nor have been at any time made. (Exhibit SS; testimony of Pedro A. Miranda). Exhibit RR is a graphic representation of these plans.

In the meantime, however, the Governing Board of the Land Administration of Puerto Rico had on January 24, 1963 adopted its Resoultion No. 6 authorizing the acquisition of said lands of Rosso by purchase, or condemnation, pursuant to the alleged authority therefor granted by the Planning Board January 23, 1963 in its resolution referred to as "Scope of the Project", approval of which had been requested by the Executive Director of the Land Administration by the latter's consultation of August 29, 1962.[5] The said Resolution No. 6 stated that Rosso's lands were within the *Scope of the Project* which had been approved by the Planning Board January 23, 1962, and in recommending their acquisition the Vice-Chairman (also Chairman of the Planning Board) stated:

> ". . . . Mr. Garcia Santiago describes the situation in connection with these properties and states that there is no urbanization project whatsoever respecting the same before the Board. He continues to inform that there is no proposal whatsoever for these lands and that Mr. Rosso is a public works constructor rather than an urbanizer. He advies that on the 20th of June 1962, after the act creating the Land Administration was already in effect, this firm submitted to the consideration of the Board a proposal to urbanize part of said lands for industrial purposes. On the

[5] This consultation was sent to the President of the Planning Board August 29, 1962, but was not filed in the Office of the Secretary of the Board until January 21, 1963. A copy is appended to the Opinion of the Supreme Court of Puerto Rico.

> 5th of October 1962 said firm was advised of the determination adopted by the Planning Board at its meeting of the 4th of October 1962 in which it stated that the proposed use for these lands was not at the present time the most adequate. On the 19th of October 1962 the firm submitted to the consideration of the Planning Board a location and use consultation for the said lands advising that it proposed to develop them for residential and industrial purposes."

He also stated that these lands

> ". . . . formed a part of a continuous area and will integrate that area in this manner planning and low cost housing will be accomplished."

Nothing was said or determined in the said meeting as to whether the lands were vacant, or impeded the union of different urbanizations; nor whether they were needed for immediate or future use, nor was any specific purpose of the acquisition stated.[6]

Rosso's lands were among the first authorized to be acquired by the Land Administration.

And on April 4, 1963, the Planning Board issued its order that Rosso's consultation of October 19, 1962 be filed in the archives of the Board on the sole ground that the Land Administration had become interested in the acquisition of said lands and on petition for rehearing the Board denied and rejected the consultation May 9, 1963 on the same grounds (Exhibit BB).

The Land Administration Act contains a Statement of Motives declaring that Puerto Rico is one of the most

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[6] According to the Executive Director of the Land Administration 127 cuerdas of Rosso's land already in use for industrial purposes (see Ex. E) was an insignificant part thereof.

densely populated areas in the world; that the monopolization of land by its owners creates an artificial shortage for the same, which raises its price at a rate higher than the rise in price of other properties and staple commodities, thus preventing low income people from acquiring land in appropriate areas; that this fact creates undesirable urban expansions which consequently burden the cost of public services such as roads, water supply, sewage, and others; that it also increases the fixed cost of industrial and commercial enterprises, wherefore competitive commercial disadvantages ensue. The Statement further declares that present legislative devices such as taxation, planning, and zoning regulations, to control the continued rise in land values, seem to be inadequate, this problem also affecting or preventing the implementation of the master plans;[7] that it is in the public interest to avoid as soon as possible the unmeasured and disproportionate increase in land values in the market; and that as a matter of legislative finding, it is declared that the land reserve authorized by the act constitutes in itself a public end.

The legislative intention is then declared to be that the Administration created by said Act will promote the welfare, economic liberty, and social justice of present and future inhabitants of Puerto Rico and, among other goals, shall try to avoid the concentration of land, for speculative ends, in the hands of any person, thus assisting in carrying out the Commonwealth's public policy of industrial,

[7] Although Section 8 of the Puerto Rico Planning and Budget Act of 1942 provided that the Planning Board "shall prepare and adopt a Master Plan or plans", it has never done so. Notice and public hearings prior to adoption and approval of the Governor are required for Master Plans, Official Maps, Subdivisions and Zoning Regulations to become effective. (Laws of Puerto Rico, 1st Reg. and 1st Spec. Sessions 1957, pp. 491-493; 23 LPRA 8; Laws of Puerto Rico, 2d Reg. and 2d Spec. Sessions 1958, pp. 17-18, 23 LPRA 16). The characterization of the "Scope of the Project" as a Master Plan by the Supreme Court of Puerto Rico was therefore manifestly erroneous.

commercial and housing development and providing public services so that there may be an orderly development in keeping with the master plans, (see Footnote 7), for all of which purposes the Administration shall have all necessary rights and powers.

While the Land Administration was by the Act empowered to "draft, adopt, amend, and repeal rules and regulations governing the policies of its activities in general" which when filed in the Office of the Secretary of State and published in the Commonwealth Register and a newspaper would have the effect of law, no rules or regulations, however, were adopted and promulgated. By-Laws were submitted and adopted and at the meeting of the Governing Board held July 10, 1962 guides or norms for the operation of the Administration were submitted by the Executive Director and approved but it was resolved that in order to have greater flexiblility they were to be considered as guides to the Administration only, and that they would not be adopted formally as rules and regulations because they would restrict the flexibility of operation, and that no publicity would be given to either the by-laws or guides or norms. (Minutes of Meeting of Governing Board of August 11, 1962).

Among the so-called norms adopted by the Governing Board July 10, 1962, were the following:

> "The Administration shall not acquire lands with a preliminary development, in good faith, approved or under study by the Planning Board as of the date upon which the bill which became the Act creating the Land Administration of Puerto Rico was filed in the Legislative Assembly. Good faith may be shown by acts which evidence an intention to carry out immediately or in a determined immediate future the approved development. Prima Facie no development

shall be considered to be in good faith which has been presented to the Planning Board after approval of the act creating the Land Administration of Puerto Rico.

"If the Administration sells lands to a private urbanizer at cost or under cost, it shall take all the convenient, just and reasonable measures necessary so that the urbanizer can make a profit only on his investment in the lands and the improvements which he carries out, and not excessive profits based on the value of the lands after being urbanized."

As to this latter norm in the meeting of the Governing Board, held August 11, 1962, it was pointed out that lands would be acquired prior to their development by the owner, thus reducing the cost thereof to the Government.

And in the meeting of the Governing Board held July 20, 1962, it was decided that for purposes of priority of acquisition, lands would be divided into two classes as follows:

"The first group will comprise those properties which it is necessary to acquire for immediate use.

"The second group will consist of those properties, whose uses are not needed for immediate use but are needed for future use."

At the said meeting of July 10, 1962, the Governing Board had adopted the norm that preference in acquisition should be given to:

"Lands that consolidate or integrate already urbanized areas. (That is, pockets in the urban zone)."

At least (as explained at the meeting of the Governing Board held July 20, 1962) such lands as were impeding the union of different urbanizations.

The Scope of the Project, submitted on August 29, 1962 by the Executive Director of the Land Administration to the Chairman of the Planning Board requested a

> ". . . consultation with respect to its project of development of the Metropolitan Area of San Juan, in conformity with the powers and duties of this Administration and for the purpose of carrying out the objects of the law which created it."

The Metropolitan Area referred to was shown on a map by a line drawn thereon so as to enclose parts of the Municipalities of Toa Baja, Catano, Bayamon, Guaynabo, San Juan, Rio Piedras, Trujillo Alto and Carolina, with a total area of some 70,000 cuerdas. (Testimony of Jose Miguel Vega).

It was stated therein that the Land Administration had made a study of factors of population, economics and use of land in the area, and had prepared a projection of the problem of growth to the year 1980, and had determined that for the development anticipated a total of 28,720 cuerdas of land would be required for the following uses:

Industry, tourism and commerce	1,030 cuerdas
Education and institutions	580 "
Recreation	600 "
Medical Hospitals	200 "
Transportation, Communication	910 "
Housing	24,700 "
Government Offices	460 "
Others	240 "

and it requested the Board to approve the *Scope of the Project* for the acquisition of land.

The Scope of the Project, including the plan, was pre-

pared by Mr. Jose Miguel Vega Ortiz, a planner in the employ of the Administration, on the basis of data obtained from governmental agencies and the projections made by the Planning Board of population, housing, employment, schools, etc., his work being that of compilation and evaluation. Due to the urgency of his work he did not consult with anyone representing private industry, commerce or the lands to which his work refers.[8] He visited the area in general, and rode around the roads. The area does not conform to the municipal boundaries, and since there is no official map or plan, nor indeed definition of the Metropolitan Area of San Juan, the area shown on the plan seems to have been taken arbitrarily. The Executive Director signed and submitted the consultation, and regarded it as a routine matter. (Testimony and Deposition of Felix Mejias; Testimony of Jose Miguel Ortiz Vega).

Although at a meeting of the Governing Board of the Administration held November 1, 1962 the *Scope of the Project* was considered and its meeting held January 21, 1963 discussion was had of the approval of the resolution of the Planning Board with respect to the Scope of the Project. it was not until January 23, 1963 that the Planning Board, at its afternoon private session, approved the consultation by its Resolution No. 63-C-210 in Consultation No. 63-279 (Exhibit 2 for Plaintiff), in which it authorized the Administration to acquire by purchase, condemnation or other legal means the "vacant urbanizable lands" found in the said Scope of the Project, the total amount of which was 25,700 cuerdas, the present right of use of the owner, however, to remain unimpaired until condemnation proceedings are filed. (See page 10 of the Opinion of the Supreme Court of Puerto Rico). And at its adjourned meeting of January 24, 1962 the Governing Board of the

[8] Jose Miguel Vega Ortiz was appointed as planner of the Administration at its meeting of July 10, 1962.

Administration adopted said resolution of the Board and authorized the acquisition by the Administration, through purchase, condemnation or other legal form upon the terms and conditions satisfactory to it "of the lands described in the Scope of the Project and in the plan".[9]

Section 22 of the Planning and Budget Act (Laws of Puerto Rico, 2d Spec. Sess. 1949, 2d Reg. Sess. and 4th Spec. Sess., and Reorg. Plans, 1950, pp. 918 and 920; 23 LPRA 23) prohibits the acquisition of any land by a government instrumentality or corporation unless the proposed location, character and extent thereof shall not conflict with the Master Plan and shall have been submitted to and approved by the Planning Board according to the provisions of Section 3 of said Act. The Executive Director of the Administration stated that it was the view of the Administration that once the Scope of the Project was approved by the Planning Board and made public the Administration did not have to ask for authority from the Board to acquire specific land within the Scope of the Project, and that it was a warning to the public within the Metropolitan Area of the area in which the Administration was to concentrate its acquisitions (Testimony of Felix Mejias).

And the Vice-Chairman of the Administration, also Chairman of the Planning Board, in explaining the Scope of the Project stated that by it it was intended to maintain the price of land existing at the time of its announcement to the public, under the doctrine of the case of *United States* v. *Miller,* 63 S. Ct. 276, 317 U.S. 369, 87 L. ed. 336, reh. den. 63 S. Ct. 557, 318 U.S. 798, 87 L. ed. 1162), that it

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[9] The Executive Director of the Administration stated that it would be impossible for the Administration to acquire all of the said vacant urbanizable land and that it did not intend to do so but would acquire some; that it would not develop or construct, and that except for conventional public works and facilities, private enterprise would develop and construct. (Deposition of Felix Mejias).

was the equivalent of a freezing of prices; that if any development outside the Scope of the Project was sought, the Planning Board would not approve it, and the Executive Director stated that the announcement to be made would be pursuant to the doctrine of said case. (Minutes of the Meeting of the Administration held September 12, 1962 and November 1, 1962).

While neither law nor regulation defines vacant urbanizable lands the Executive Director of the Administration stated that vacant land meant land not urbanized and that urbanized lands were those which had structures thereon in accord with their best use, and again he stated that vacant lands were those not being used intensively in housing or some other intense way. (Testimony of Felix Mejias; Deposition of Felix Mejias).

After learning of the adoption of said Resolution No. 6 of January 24, 1963, Rosso requested reconsideration from both the Land Administration and Governor Munoz Marin. (Exhibit M, letter of March 5, 1963).

Mr. Felipe S. Viscasillas, an aide to the Governor, was designated by the Governor to hear the evidence and allegations of Rosso in support of his request (Ex. M, Letter of Roberto Martin to Felix Mejias of March 28, 1963), and on March 18, 1963, Rosso and his assistant met with Mr. Viscasillas for three hours, and presented the facts and allegations. On the following day Viscasillas wrote the Executive Director and suggested that before proceeding with condemnation of Rosso's lands he carefully examine the evidence that Rosso prior to June 16, 1962 intended to develop the lands, saying:

> "Even in case this evidence does not show with all clarity such intention of Mr. Rosso, perhaps it would be desirable to explore the possibility of desisting from the condemnation if there be ways of assuring

> that Rosso will within a reasonable time carry out in said lands the type of development that the Planning Board regards desirable to be made there."[10]

(Exhibit N).

And at the suggestion of Mr. Viscasillas, Rosso's representative on April 1, 1963 submitted to the Executive Director documentary evidence showing his intent to develop the said lands prior to June 16, 1962. (Exhibit M and O).

At the meeting of May 1, 1963 the Governing Board of the Administration denied Rosso's request for reconsideration (Ex. Q) and Rosso's representatives were so informed by letter of May 17, 1963 (Ex. K).[11] In that letter it was said that the purpose of the Administration in acquiring Rosso's and other lands in the area was that they be utilized principally for the housing needs of families with moderate income and that they be developed integrally as a unit,[12] that by their location and topography they formed a unit and that they formed one of the few ample areas

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[10] The Executive Director pointed out, however, there would be no consideration for such, no quid pro quo except the threat of condemnation (Exhibit Q).

[11] Mr. Sanchez Vilella, Acting Governor, acted as Chairman of this meeting, Governor Munoz Marin being absent.

[12] But by Sections 10, 11, 23, 24, 30(a) to (d), 43 and 9 of the Puerto Rico Planning and Budget Act the Planning Board had ample powers, and it was its duty, to require integration of any subdivision or development, with adjacent areas. (Laws of Puerto Rico, 1st Reg. and 1st Spec. Sessions 1957, pp. 493-495, 23 LPRA 10; Laws of Puerto Rico, 2d Spec. Sess. 1949 and 2d Reg. and 4th Spec. Sess. and Reorg. Plans 1950, pp. 911-912, 23 LPRA 11; Laws of Puerto Rico 1951, pp. 1234 and 1236, 23 LPRA 24; Laws of Puerto Rico 1951, pp. 1236 and 1238, 23 LPRA 25; Laws of Puerto Rico, 2d Reg. Sess. 1962, pp. 48-50, 23 LPRA 30(a)(b)(c) and (d); Laws of Puerto Rico 1949, p. 532, 23 LPRA 43; Laws of Puerto Rico, 4th Reg. Sess. 1960, pp. 400-401, 23 LPRA 9). (See also 23 Rules and Regulations of Puerto Rico 10-1, et seq., 43-1, et seq. and 9-1 et seq.) Under the Land Administration Act the Land Administration itself is specifically subject to these provisions of law and the regulations.

with adequate location available for urbanization in the San Juan Area; and as to Rosso's intention to develop his lands, that since on June 16, 1962 Rosso had not filed preliminary plans before the Planning Board, but had filed them some five months later (October 19, 1962), they were not filed in good faith under the norm adopted by the Governing Board of the Administration at its meeting of June 20, 1962. But it was added, once the lands were acquired by the Administration, there was nothing to prevent Rosso's construction enterprise in participating in their development.[13]

On May 21, 1963 the Executive Director of the Administration requested the Acting Governor to initiate condemnation proceedings to acquire Rosso's said lands, but on May 23, 1963, Rosso's representative informed Mr. Sanchez, that Rosso's appeal was pending before Governor Munoz Marin. (Exhibit S).

Mr. Viscasillas had reported on the matter to the Chief or Executive Aide of Governor Munoz Marin (Ex. Q) and on June 20th the Executive Director of the Administration had reported to the Governor's Aide (Viscasillas) on the documents submitted by Rosso, and these documents with said comments, and a partial summary of Rosso's experience, were submitted to Governor Munoz Marin by his Aide on June 21st and 26th respectively (Exhibits M and L), and in answer to the Governor's inquiry informed him that the Chairman of the Planning Board had said that the Board did not have the power to disapprove a proposal

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[13] There were no plans, preliminary or final, that had been prepared by the Administration, department, instrumentality or agency of the Government, or any person, for the development of the lands referred to, there were no Master Plans, nor had anyone in the Land Administration gone over, inspected or studied the lands. As late as February 1964 the Executive Director of the Land Administration asked the Planning Board the use that could be made of the lands under the Zoning Regulations and the population density prescribed. (Exhibit D).

for urbanization on account of considerations of price of the units to be constructed. (Exhibit L).

On July 12, 1963, Governor Munoz Marin decided that the Rosso lands should be condemned and then resold to Rosso at the price of condemnation so that he could develop them in conformity with the conditions which the Government might impose, that he wished to meet with Rosso after the seventeenth and before the twenty-fifth of July, and desired the Executive Director of the Administration and the Chairman of the Planning Board to counsel him with respect to the implementation of his decision. (Exhibit K).

Various alternatives were suggested by the Chairman of the Planning Board and by the Executive Director of the Land Administration, ranging from resale of the entire area the Land Administration proposed to acquire from others as well as from Rosso, to the resale of a part of the Rosso lands, including for industrial development the area he had on June 20, 1962 asked the Planning Board to approve and authorize. (Exhibits E, J, G and H).

Neither the said decision of Governor Munoz Marin to condemn and resell the lands to Rosso nor any of the suggested alternatives were offered to Rosso and on December 5, 1963 the complaint for condemnation of Rosso's said lands (not including a parcel of some 26 cuerdas) was filed in the Superior Court of Puerto Rico, San Juan Section, by the Commonwealth of Puerto Rico, represented by the Acting Governor, instituted at the request of the Land Administration under the authority of Act No. 13 of May 16, 1962, the Land Administration Act (Laws of Puerto Rico, 2d Reg. Sess., pp. 11 to 29, 23 LPRA 311(a) to (s), and the General Law of Eminent Domain of March 12, 1903, as amended, Laws of Puerto Rico 1948, p. 242 and Laws of Puerto Rico, 2d and 3rd Spec. Sess., pp.89-92, 32 LPRA

2905, 2907). It was alleged that the taking had been approved by the Planning Board, and that the Executive Director of the Land Administration

> ". . . has determined as useful, necessary, and convenient in order to carry out the objects and purposes of the act creating the Land Administration, the properties object of the present proceedings, and more specifically in order to devote them to the purposes of fitting out and efficient use of new areas for the necessities of the community creating new and adequate reserves of land to assist the Commonwealth of Puerto Rico and achieve its public policy and for any other purposes destined to achieve the object of the Act which created the Land Administration of Puerto Rico; . . . their acquisition are of public necessity and utility since they are in compliance with the purposes of the Land Administration and the objects for which it was created."

The complaint was accompanied by a Declaration of Taking signed by the Acting Governor in terms essentially the same as the determination of the Executive Director, and paragraph 2 of the complaint set out said determination.

The complaint also alleges that:

> "The Commonwealth has urgent necessity of obtaining the immediate ownership of the properties . . . and that physical delivery of the land be made of it."

Simultaneously a motion was filed praying for vesting of title in and delivery of possession to the Commonwealth within five days after notice of order, and on the same day

of filing such an order was made and entered by said court ex-parte.[14]

Following defendant Rosso's motion to set aside the said order of December 5, 1963 on the grounds that the taking was not for a public purpose, and would irreparably damage defendant, plaintiff filed a motion alleging that the taking was not intended to stop operations of defendant Rosso nor to cause loss of employment to his employees, that plaintiff has offered to pay for the improvements defendant may make pending delivery, that defendant Rosso had filed a motion to set aside the order of December 5, 1963, that it was normal to permit the parties to file memoranda and provisional steps be taken for delivery, and praying that (1) a term of fifteen days be granted for filing memoranda, (2) that defendant Rosso be authorized to continue his operations in the lands and carry on work that involves useful improvements and not impede future use and (3) provide that the Land Administration will pay a just price for such improvements. The Court by its order of December 24, 1963 granted plaintiff's motion ex-parte as to (2) and (3), and extended the date for delivery until January 3, 1964 which time it set to hear oral argument and receive memoranda on defendant Rosso's motion to set aside the order of December 5, 1963.

On January 7, 1964 Appellants filed their "Objections to the Proceedings, Request That The Order of December 5th, 1963 Be Vacated and That the Complaint Be Dismissed", which the Superior Court considered and held to be Appellants' answer to the complaint.

In this answer Appellants among other objections, alleged specifically that the taking of their property was not for a public purpose and no public necessity existed

[14] By a subsequent order of December 31, 1964, the court said the five day period was due to clerical error, and that it had in reality specified a term of thirty days after notice.

therefor, that the taking was arbitrary, unjust and capricious, that it was not authorized by law, that it was not for the purposes set out in the Land Administration Act, that it was for a private purpose, and that legislative powers had been delegated in the Land Administration since the Act contained no rule of standard sufficient to guide the Administration in the administration of the Act, and that the Appellants by said taking are deprived of their property without due process of law and are denied the equal protection of the law in violation of the Fifth and Fourteenth Amendments of the Constitution.

By order of the Superior Court of February 28, 1964, delivery of possession was suspended pending the determination of the objections made and the questions raised by Appellants.

Trial was had on the issues raised, excluding the matter of determination of compensation, and the Superior Court on July 2, 1964 made and entered its Findings of Fact, Conclusions of Law and Statement of the Case, and its judgment vacating the order of December 5, 1963 and dismissing the complaint.

The manner in which the Superior Court passed on the questions raised appears from the following extract, pp. 45 and 46 of its Findings of Fact, Conclusions of Law and Statement of the Case:

> "Plaintiff prays in its complaint that this Court grant the condemnation relying on the broad and ambiguous terms of the Act Creating the Administration, the Resolution of the Planning Board approving the letter-consultation submitted to it by the Executive Director of the Administration, on resolutions five and six of the Governing Board of the Administration and on the averment of its complaint. In order to grant the remedy requested, this Court would be com-

pelled to consider hypothetically all of the possible and indefinite uses to which the Administration desires to dedicate the properties which are the subject of this action, and that it determine that none of them are repugnant to the rights which the Constitution of the Commonwealth of Puerto Rico and the Constitution of the United States of America guarantee every land owner. We will have to assume that any use which the Administration decides to give these properties must be constitutionally valid, without the subjection of the Administration in this regard to a precise definition of its purposes, or to formulate some hypothesis in respect to the final use of the same to decide in favor or against the condemnation, even though the certain, final and ultimate use of said properties turned out to be one that is not included within our hypothesis.

"Although grave and serious doubts may be entertained respecting the constitutionality of a statute as in the present case it is a cardinal principle, to which we adhere, that the Court should avoid a decision in this respect if it be possible to make a reasonable construction of the statute or if there is any other ground or reason permitting a disposition of the case without deciding the constitutional question. *Commonwealth* v. *Aguayo*, 80 PRR ——, ——.

"In the case before us the principle is of obvious application. Under the facts and other circumstances in this case, it is unnecessary to make the logical and inexorable conclusions which refer to and arise from a simple confrontation of the constitutional principles heretofore stated with the significant and conspicuous provisions or omissions of the statute which we have pointed out. Likewise it is unnecessary to consider and decide the other questions of consti-

tutional or procedural nature raised by defendants in the pleading and in the brief filed.

"Under these facts and circumstances, we hereby should conclude and do conclude that the procedure for the condemnation of the properties which are the subject of this action has not been carried out in conformity with pertinent legislation. The impression (sic imprecision) of the statute, of resolutions #5 and #6 of the Governing Board of the Administration; the insufficiency of the proof; the absence of any master plan whatsoever, and a Regulation governing the Administration; the actions of the agencies concerned; the lack of a definite public use and the lack of a necessity for the acquisition which is sought, violate due process of law and invalidate the present action."

In its notice of appeal to the Supreme Court of Puerto Rico the Commonwealth alleged as error, among others:

"The error of the Court in applying the guarantee of due process of law and in consequence its invalidation of the present condemnation action (here the grounds were set out)."

After stating that Appellants had attacked the constitutionality of the Land Administration Act as applied to the facts of the case, on the grounds heretofore stated (see page 21 and footnote 7, pp. 21 to 23 of its Opinion) the Supreme Court of Puerto Rico said and held that:

"We hold from this moment that in the light of the record and of the facts, these other attacks are without merit and cannot be sustained. Also without merit are those referring to the unconstitutionality of Act 13, such as delegation of powers without ade-

quate standards, ..., transactions in real estate the denial of equal constitutional protection of the law . . . .".

"Still to be considered and adjudged is the challenge to the constitutionality of Act 13 by reason of the alleged inexistence of a public end or purpose. . . .".

And as to this, as well as the other grounds, it stated and held (p. 58 of the Opinion):

"For the reasons stated, we must conclude that:

(i) Act No. 13 of May 16, 1962 is constitutional in all of its aspects, means and methods. . . . .".

(v) All acquisition of lands by the Administration with a view to complying with the provisions of Act 13 of 1962 is of public interest and of social benefit, for which condemnation proceedings may be used."

A copy of the judgment of the Supreme Court of Puerto Rico and its order denying a rehearing are included in the Appendix, infra.

The Questions Are Substantial

1. The soaring cost of housing has become a national problem and is not limited to Puerto Rico. It has been the subject of a warning to the President by his Council of Economic Advisers and is now under study by the Cabinet Committee created by the President in February of this year. The rising cost of urban land is an important element involved but it is not the only one. Increasingly

higher salaries and wages, especially those of skilled artisans, a lag in practices and techniques, feather bedding by unions, archaic building codes, the rising cost of financing both for construction and mortgage loans, local differences, the requirement of Planning Boards, the cost of closings including notaries fees and recording charges — these and other factors are involved. The questions here raised relate to this national problem and have, we believe, great importance and interest to the public in general and to State and National governments, to builders and developers and prospective home owners in particular.

2. Although the Acting Chairman of the Land Administration had previously written Rosso his lands were to be used for housing for persons of moderate means the declaration of taking of neither the Land Administration nor the Acting Governor nor the complaint, contain any statement of "the public use" for which Appellants' lands are sought as required by Section 14(a) (1) of the statute but in effect state that the taking is to carry out the purposes of the statute by using the lands for any one or more of the uses and objects within the powers and rights of the Land Administration and the Executive Director of the Administration so testified. No specific use or purpose is stated nor could there be since admittedly neither the Land Administration nor any other instrumentality or Department of the Government nor any individual other than Rosso had made or was making any plans for use or development of the lands, nor indeed was there sufficient knowledge and familiarity of the Administration to formulate such plans. Moreover, there was no Master Plan or Plans of the area to be implemented, and only a part of the lands were zoned. For the same reasons, neither could the Land Administration know to what use or purpose it would at any time in the future put the lands. Knowing no present use, nor future use, the taking was in reality,

for an unspecified and undetermined contemplated use at some time in the future. Thus the case differs from that of *Berman* v. *Parker,* 75 S. Ct. 98, 348 U.S. 26, 99 L. ed. 27, for there the taking was for slum clearance to be carried out within a reasonable time in the future, and specific plans had been formulated by the Planning Commission, and approved by the Commissioners after public hearing as required by the statute as a condition for condemnation. In *O'Neil* v. *Bd. of Commr's.,* 3 Ohio State 2d 53, 209 N.E. 2d 393, it was held that a municipal corporation could not condemn lands for some contemplated but undetermined future use, and that public use cannot be determined as of the time of completion of a proposed development but must be defined in terms of present commitments which in the ordinary course of affairs will be fulfilled. And in *City of Cincinnati* v. *Vester,* 30 S. Ct. 360, 281 U.S. 439, 74 L. ed. 950, this Court apparently took the view that it could not determine whether the taking was or was not for a public use by speculation as to what use the City might in the future put the property. (See also *People of Puerto Rico* v. *Eastern Sugar Associates,* 156 F. 2d 316, Cert. den. 67 S. Ct. 190, 329 U.S. 771, 91 L. ed. 664). The provision in the statute for acquisition of an "adequate reserve of land" does not make less effective the constitutional requirement that the condemnation for use as a reserve must be for a public purpose. Since the taking is for a contemplated but undetermined use in the future, there is no limitation in the statute of the time the Land Administration may hold the lands before deciding that it will not use them, or the use to which it may decide to devote them. Even if the taking were for a specific work, the statute permits a period of 15 years for devoting the lands to such use. Both periods it is submitted are excessive, arbitrary and unreasonable. A period of 5 years, as is provided in the Federal Aid High-

way Act of 1956 (Sec. 110(a), Public Law 627) seems more reasonable. (See also *Board of Education* v. *Baczewski,* 340 Mich. 265, 65 N.W. 2d 810). Since therefore the taking in the present case was for an undetermined and unspecified contemplated use at some time in the future, and no necessity therefor is shown, it was not for a public use and hence violates constitutional due process of law.

3. The evils said to exist by the Legislature in the Statement of Motives of the Statute are the monopolization of urban lands and lands adapted to urban development, and retention thereof by their owners unused which it is said create an artificial shortage of such land and causes an excessive and disproportionate rise in price, which ever increasing price cannot be controlled, nor the problems caused thereby be solved, under existing laws and regulations, nor can the master plans be implemented.

The powers and rights that are granted to the Land Administration, including the power of eminent domain, would, it would seem, be those necessary to prevent and avoid said evils and solve the said problems caused thereby.

None of those evils exist in this case nor the problems caused thereby. On the contrary, Appellants were developing their lands under plans conforming to applicable law and regulations, for admittedly the best possible use, and in the mean time were making use of the lands. The housing and other units Appellants proposed to form and construct presumably would be offered to the public in free competition with units of the same general class formed and constructed by others, and there is no evidence indicating that the prices thereof would be excessive, unfair or unreasonable. There was no public policy against urban development by private industry. In fact the Executive Director of the Land Administration stated that it was intended that private industry would develop and construct. Moreover, the same law and regulations applic-

able to the development of Appellants would be applicable to a development by others including the Land Administration. The Statute, it is believed, was not designed for nor did it authorize the taking of Appellants' lands. It affirmatively appeared, moreover, that Appellants' lands were condemned because their preliminary plans for development were not filed in the Planning Board prior to the introduction in the Legislature of the bill that became the Land Administration Act. But that Act grants no authority to condemn lands on such grounds, nor are such grounds associated with the use of the lands. Nor do such grounds constitute a public use. Moreover, there is no basis whatever for the suggestion that Appellants' development was not in good faith. At one point it was said that Rosso was a public works contractor and not a land developer. The uncontroverted evidence shows he was also an experienced urban developer. Moreover, subsequently the Governor, Chairman of the Planning Board and Executive Director of the Land Administration were quite willing to resell the lands condemned back to Rosso and allow him to develop them under the Planning Board law and Regulations. As to integral development spoken of by the Executive Director of the Administration and the Chairman of the Planning Board, this of necessity would result from appropriate application of the law and Regulations by the Planning Board. Under these circumstances the taking would seem to be arbitrary, capricious, unreasonable and unauthorized and therefore violative of constitutional due process of law.

4. The dominant, if not the sole purpose of the Act, is that of controlling prices of urban land or land suitable for urban uses, and the prices of housing or other units formed or constructed by land developers, and by Section 13 thereof all real and personal property necessary to carry out the purpose of the Act are declared of public utility,

that is, affected with a public interest. Moreover, the Act is held to be emergency legislation. While real estate has never been the subject of price regulations insofar as the sale thereof is concerned (*4 Nichols on Eminent Domain,* 3rd Ed. Sec. 12.3111, p. 96), and while the exercise of such control would indeed be novel, there would appear to be no constitutional prohibition against it, particularly where the real estate is declared to be of public utility, and an emergency is declared to exist. It would seem that the legislature may fix prices for the sale of real estate, or limit the profit on sales thereof, or provide that it be done by officials, commissions or government instrumentalities. This Court, however, has held that price regulation cannot be arbitrary, discriminatory and demonstrably irrelevant to the policy adopted by the Legislature (*Nebbia* v. *People of the State of New York,* 54 S. Ct. 505, 291 U.S. 502, 78 L. ed. 940), and this is equally true as to the fixing of rates and charges or margins of profit (*A. M. Holter Hardware Co.* v. *Boyle,* 263 F. 134, app. dismissed 42 S. Ct. 91, 257 U.S. 666, 66 L. ed. 425). And where prices or rates are regulated by officers, commissions or instrumentalities, procedural due process must be afforded to the persons affected (*Gordon* v. *Bowls,* 153 F. 2d 614, cert. den. 66 S. Ct. 1350, 328 U.S. 858, 90 L. ed. 1629) and to the public generally (*Robbins* v. *Webb Cut Rate Drug Store,* 16 So. 2d 121, 153 Fla. 822) a fair and open hearing being a minimal requirement (*Ohio Bell Telephone Co.* v. *Public Utilities Com.,* 57 S. Ct. 724, 301 U.S. 292, 81 L. ed. 1093; *Abbot Dairies, Inc.* v. *Armstrong,* 102 A 2d 372, 14 N.J. 319) and persons affected must be afforded an opportunity at some stage to test the regulation in the court (*Ohio Valley Water Co.* v. *Ben Avon Borough,* 40 S. Ct. 583, 253 U.S. 287, 64 L. ed. 908). The acquisition by the Administration of land by condemnation cannot reduce, but will increase its price, since it must pay market value at the time of

condemnation, and add thereto the cost of condemnation. While some members of the Administration's Governing Board apparently thought the publication of the Scope of the Project would freeze prices, obviously there was no project under the doctrine of *U. S.* v. *Miller,* supra, nor could the denial by the Planning Board of Appellants' right to develop on the ground that the Administration wanted to acquire their lands permit the Administration to acquire them at the market value of lands that could not be developed, as some members of that Board seemed to think, since that would deprive Appellants of their right to develop without compensation; and hence without due process. Moreover, normally acquisition of land by the Administration would reduce the supply of land available for purchase, and hence increase its value or price in the market.

The Act, however, authorizes the Administration to sell land acquired by condemnation for public uses, to developers at whatever price the Administration chooses to set. That could be cost, less than cost, less than market value, or in excess of cost. But the Act requires that where sold to a developer (acquirer) to erect thereon housing developments, or any other type of project involving a subsequent sale to private persons, the Administration shall impose a restriction "limiting, through a proper formula, the profits to be had by the acquirer with respect to the land and all other costs of the project". A sale of such land below cost or market value would in effect be a subsidy granted to the acquirer, (to be passed on to purchasers of the units constructed), and with the limitation of the acquirer's profits on his subsequent sale of units to the public, would represent arbitrary and discriminatory fixing of prices, not in fair and open competition with other units of the same general class formed and constructed by others, in violation of the due process and equal protection of the laws clauses

of the Fifth and Fourteenth Amendments, and such determination of prices would seem to be self-defeating and meaningless, since it would be a subsidy granted by the Administration rather than a reduction in prices, and since those benefited by the subsidy, undetermined and indeterminate, would acquire the units at less than market value and could, and probably would, dispose of them at market value and a profit. This would seem to invite and encourage speculation, an evil sought to be prevented by the statute. Moreover, competing developers and the public would be deprived of procedural due process, since the fixing of prices and the allowable amount of profits are not done by the Legislature but by the Land Administration. This use of the power of eminent domain, power to grant subsidies and power to limit profits in order to force competing developers to sell at less than market value, and possibly at a loss, would also seem to smack of unfair competition. Such a sale by the Administration at cost would also involve denial of procedural due process, and a sale in excess of cost would seem to involve the use of condemnation to engage in real estate transactions for profit, a private rather than governmental activity or function.

Sales by the Administration for public purposes not requiring the statutory limitation of profits if at cost, market value, or in excess thereof, will not tend to cause reduction in the price of land by others. If the sale is below cost or below market value, it is a subsidy, and a purely artificial price which of necessity cannot be continued. Such artificial price it seems would have no effect on prices of lands in the market.

Sales to developers at less than cost, or less than market value, with price regulation denying procedural due process, involving in effect a subsidy to indeterminate persons, could not constitute a taking for a public use or purpose, yet it

is one of the many transactions expressly authorized by the Act.

And such price fixing would be arbitrary, unreasonable and demonstrably irrelevant to the policy adopted by the Legislature and would violate the constitutional guaranty of equal protection of the laws.

5. The Act contains neither adequate standards nor any safeguards, nor any rules by which such standards are to be fixed or determined, and hence involves a delegation of legislative powers to the Land Administration. Thus the power to limit the amount of profits on units constructed on land condemned and resold to developers leaves the standard by which profits are to be determined to the judgment and unlimited discretion of the Governing Board of the Administration or to its Executive Director, an appointee of the Board, to which such power may be or has been delegated. (See *Yakus* v. *United States*, 64 S. Ct. 660, 321 U.S. 414, 88 L. ed. 834). The determination of "monopolization of lands" kept unused by their owners, and "the concentration of land holdings for speculative purposes by any one person" is possible only by reference to some specific standard, yet the Act contains none, nor does the Act contain any safeguards to protect persons from the arbitrary, capricious and unreasonable determinations of the Administration or its Executive Director. The promotion, in a planned and efficient manner "of the welfare, the economic and the social justice of the present and future inhabitants of Puerto Rico" are both extremely broad and vague, and it would be impossible for the public, the legislature or the courts to ascertain whether the Administration had or had not complied with or lawfully administered the Act. The master plans to be implemented, a standard set forth in the Act, are non-existent and hence so is that standard. Here the discretion left to the Land Administration, or its Executive Director, does not relate only to the

execution of the Act, nor is it sufficiently definite or certain to enable one by reading it to know his rights and obligations. (See *Zemel* v. *Rusk*, 85 S. Ct. 1271, 381 U.S. 1, 14 L. ed. 2d 179, reh. den. 86 S. Ct. 17, 382 U.S. 873, 15 L. ed. 2d 114). And from determinations as to such matters by the Administration, in the unlimited judgment and discretion of the Administration, or its Executive Director, no judicial review is provided by the Act.

Conclusion

For the reasons stated, Appellants respectfully submit that the questions presented in this appeal are so substantial as to require plenary consideration, with briefs on the merits and oral argument for their resolution.

WALTER L. NEWSOM, JR.
P. O. Box 2152
San Juan, Puerto Rico 00903
BROWN, NEWSOM & CORDOVA
Attorneys for Appellants

JAMES B. DONOVAN
Of Counsel

Appendix A

IN THIS COURT OF FIRST INSTANCE OF PUERTO RICO
SUPERIOR COURT — SAN JUAN PART
FIRST INSTANCE OF PUERTO RICO

Civil No. E-63-1652

THE COMMONWEALTH OF
PUERTO RICO, represented
by its Honorable Governor,
Plaintiff,

v.

METROPOLITAN CONSTRUCTION CORPORATION,
JORGE I. ROSSO and his
wife Carmen Descartes, et als,
Defendants.

Re: CONDEMNATION

CONDEMNATION STATEMENT OF THE CASE FINDINGS OF FACT AND CONCLUSIONS OF LAW

This is an action filed on December 5, 1963 by the Commonwealth of Puerto Rico, against the Metropolitan Construction Corporation, Jorge I. Rosso, his wife Carmen Descartes and others in which it is requested that an order be entered that the Commonwealth of Puerto Rico has been vested with the full and absolute dominion title to the properties stated in Exhibit "A" of the complaint with all of their accessions, improvements, structures, servitudes and appurtenances, including all right, titles or interest that defendants may have in the same, and for the acquisition of which there has been deposited in the office of the clerk of this Court the sum of $1,381,676.00,

which they believe is the just and reasonable compensation that should be paid for the same and to have this same sum of money distributed among the persons or entities entitled to it. A description of the properties to be taken accompanies the complaint together with the compensation to be deposited, as well as the names of the persons with an interest in the same and a Declaration of Taking and Physical Delivery of the Properties, signed by the Acting Governor of Puerto Rico, Mr. Roberto Sanchez Vilella and duly countersigned by Adolfo Porrata Doria, Acting Secretary of State.

Defendants filed a document on January 7, 1964 entitled: "A Challenge to the Proceeding, Motion to Vacate the Order of December 5, 1963 and to Dismiss the Complaint." Said document in opposition to and defense in the proceeding, alleges among other things, that Act No. 13 of May 16, 1962, under which the action presented is unconstitutional, null and void, illegal and without any legal value or effect whatsoever as it constitutes an unlawful delegation of the Legislative power, because it does not establish an adequate standard or rule for the exercise of said powers; because the same do not seek any public end, purpose, reason or benefit whatsoever nor does the action show any situation of necessity or emergency that would justify such an action; that the action of the Commonwealth of Puerto Rico, by its Honorable Governor and that of the Land Administration of Puerto Rico by its Executive Director, is an ultra vires action, which infects the action with nullity and deprives the defendants of their right to due process of law and that it does not conform to the legal procedures invoked in the complaint. They further contend that said law violates the Constitution of the Commonwealth of Puerto Rico in permitting the Land Administration to hold lands in excess of 500 acres and to employ

public funds for private uses and purposes. The document ends with a prayer that the complaint be dismissed, and that a declaration be made that the Order of December 5, 1963, by which the Court declared that the Commonwealth of Puerto Rico was vested with the full dominion title to said properties, be vacated, with any other pronouncements that might be proper.

In response to said document the party plaintiff filed a motion on January 13, 1964 moving that it be stricken as having been filed in violation of the provisions of Civil Procedure Rule 58.5.

The case having been set for argument of said motions the Court decided by Order of February 24, 1964 to deny the striking of the pleadings and elected to take and consider the defenses and contentions alleged in the same as the defendants' answer to the complaint and the order for the physical delivery of the property was stayed until the case should be decided on its merits.

The issues having thus been joined, the case was set for trial, the parties appeared with their witnesses and assisted by counsel and after the introduction of ample documentary and testimonial proof, the case was submitted to the consideration of the Court.

With the attendance of the parties and their respective counsel this Court on April 2, made an inspection of the lands, no record of said inspection having been made by stipulation of the parties. From the study and analysis of the evidence the Court finds:

That the defendant, Jorge I. Rosso and his wife, Carmen Descartes, by themselves and through their different enterprises are the owners of and possess the totality of the properties described in the complaint, as well as the installations and structures upon the same and in addition they are owners of another property adjacent to the others, of approximately 25 cuerdas, which were acquired

in January, 1963 and which is not involved in this litigation.

That the defendant is a general contractor; he has carried out numerous private projects, as well as for the State and its agencies with a value in excess of $30,000,000. and that for several years he has undertaken the development of industrial urbanizations as well as commercial and residential urbanizations.

That for this purpose he acquired the properties which are the subject of this action, as well as the 25 cuerdas parcel which has not been subject to condemnation.

That the defendant some time ago commenced steps to obtain the financing for development of the properties acquired as an industrial, commercial and residential urbanization project, he acquired the available equipment for the execution of said works, he took numerous steps in connection with officers and technicians of the Planning Board, the Department of Public Works, the Aqueduct and Sewers Authority, the Water Resources Authority and the Puerto Rico Telephone Company and he made arrangements and transactions with adjacent real estate developers to assure the most efficient and coordinated development of said projects.

That the defendant ordered a survey to be made of his property, he made topographical maps of the same, he destroyed plantations of sugar cane existing thereon, he leveled the land and he channelized its natural and rain waters, installed plants for the processing of cement and gravel as well as warehouses and shops for the repair of equipment employed in his industries and other activities, he commenced the quarrying of gravel, selected earth and other natural resources of the property, which he also utilizes in the industrial field of construction.

By December 5, 1963 and in the occasion of making the ocular inspection, the lands had already been leveled, they

exhibited great movement of soil and their natural and rain waters were seen to be channelized. The equipment that has been used for such work still remains there.

That in the month of February, 1964 the Puerto Rico Planning Board suspended the approval of Urbanization Projects in the San Juan Metropolitan Area and in the meanwhile, "new guides" were being studied and promulgated for the development of new urbanizations. This suspension of the approval of projects lasted until the year 1962 when the "new guides" were adopted through Act No. 25 of June 8, 1962 and they were made effective by regulation approved by the Hon. Governor of Puerto Rico on May 17, 1963.

On April 23, 1962 the bill creating the Land Administration was filed in both houses of the Legislature of Puerto Rico, Public hearings were held, and joint reports of different committees of both houses were made and following the corresponding debates the Legislature approved the bill on the 4th day of May next. On May 16, 1962 the bill became law upon receiving the signature of the Hon. Governor of Puerto Rico and by express provisions it was immediately effective.

Since that time and up to the present the Land Administration has not adopted, nor does it have any rule or regulation to govern and exercise the powers or duties granted to it by law. Its Governing Board constituted in the manner provided by law has limited itself to the adoption of a regulation for the internal functioning of the Administration and the formulation of certain standards which it elected not to make public to preserve the greatest functional flexibility possible in its operations. The internal regulation as well as the standards have not been filed in the offices of the Secretary of State nor have they been published in any newspapers for general circulation

as required by Article 7 (e) of the act creating the Land Administration.

Among the standards mentioned, approved on July 10, 1962, the Governing Board of the Land Administration adopted the following:

> "The Administration will not acquire lands which have a preliminary development made in good faith, approved or under consideration of the Planning Board as of the date on which the bill creating the Land Administration of Puerto Rico was filed in the Legislative Assembly. Good faith may be shown by acts which evidence the intention to carry out immediately or in the immediate future to carry out the approved development. Prima facie, no development which has been presented to the Planning Board subsequent to the approval of the Puerto Rico Land Administration shall be considered to be a development in good faith."

From the 20th day of the preceding June and according to the development which he had conceived for his properties, the defendant had submitted to the Planning Board a consultation for the location of an industrial urbanization on one portion of his properties. The consultation was denied to him on the 4th day of the following October, 1962, without having summoned nor heard him, and without the Planning Board, according to the practice, having reported the same to the Puerto Rico Economic Development Administration (Reorganization Plan No. 10 of 1950, adopted pursuant to the Reorganization Act of 1949, as amended).

On August 29, 1962, while the above mentioned consultation was under consideration of the Planning Board, the Executive Director of the Land Administration sub-

mitted to the President of the Planning Board a consultation "with respect to your project for the development of the metropolitan area of San Juan pursuant to the faculties and duties of this Administration." In this consultation it was requested that the Planning Board give its approval to the described program for the integral development of the San Juan Metropolitan Area, and specifically that it approve 'The Scope of the Project' for land acquisition according to the accompanying plan."

The consultation explains that said plan graphically describes the geographic scope of the project of the acquisition of lands in the area indicated, in which the Administration proposes to execute works of public character or to carry out other programs germane to the law of its creation, and as an integral project, to make ready new areas for the urban development of the metropolitan area within the conditions which would insure the best balance with respect to the future development of the area, taking into consideration the standards prescribed by the organic statute of the Administration, especially in Article 7 (t) of the same to insure in said area the best conditions of health, safety, comfort, recreative facilities and other essential services. It is stated in the consultation that all of this is projected in such a manner as to direct the development of projects in the zone marked, and in a way that the same encourages the employment of the lands indicated in the plan in a planned and efficient manner.

Aside from the Executive Director of the Land Administration, who signed the letter of consultation aforesaid, the same was not discussed or approved by any member of the Governing Board of the Land Administration nor was it discussed nor approved in any of the meetings of said Board. It was received in the Office of the President of the Planning Board on August 30, 1962, and it was

not filed in the Office of the Secretary of said agency until January 21, 1963.

Said consultation or letter was accompanied by a map of the Metropolitan Area of San Juan and its surroundings, on which there was drawn a line which delimits according to the proof, 78,000 cuerdas of land which will be needed up to the year 1980, and amongst these, are comprised the 337.725 cuerdas which are the subject of this proceeding.

The letter or consultation of the Executive Director concludes by requesting that the Planning Board approve the "described program of integral development of the metropolitan area of San Juan and specifically that it approve the 'Scope of the Project' for the acquisition of lands according to the plan which is attached."

On August 31, 1962, two days after the above consultation was sent to the Planning Board, the Executive Director of the Land Administration addressed a letter to the defendants to state to them his proposal to survey the lands which are the subject of this action, study their soil and to undertake other necessary investigations. Neither is there any record that the Governing Board of the Land Administration having given its authorization that such a letter be sent, a copy of which was transmitted to the Planning Board.

According to the minutes written on the occasion of the meeting of the Governing Board held on January 21 and 24, 1963, it was "commenced" to discuss the resolution of the Board with respect to the 'Scope of the Project'. The session adjourned at 6 o'clock of the 21st to continue the following Thursday, January 24, 1963.

In the meanwhile, at its meeting of January 23, the Planning Board granted and approved the consultation submitted by the Executive Director of the Land Administration and issued its resolution entitled "Approval of

the scope of the Project of the Puerto Rico Land Administration for the Acquisition of Lands in the Metropolitan Area of San Juan."

In its executory part said resolution authorizes the Land Administration to acquire urbanizable vacant lands comprised within the scope of the project, but states that the right of the proprietors to use said lands comprised within the scope of the project, would not be altered until such time as a formal condemnation proceeding be filed against them.

On January 24, 1963 the Governing Board of the Land Administration resumed the meeting which had commenced on the preceding 21st and approved its resolution No. 5 declaring that the property described in the "Scope of the Project" was of utility, necessity and convenience and further authorized the acquisition of the lands described in the same, which included some 78,000 cuerdas.

In this same meeting the Governing Board approved its resolution No. 6 which declares, useful, necessary and convenient the acquisition of the lands to which this litigation refers.

As appeared from its minutes the Governing Board presented the "Scope of the Project" as a program for the acquisition of lands which would have the effect of maintaining prices of the lands from the moment which publicity was given to said program.

Once the "Scope of the Project" was approved, the Planning Board would not authorize any project or urbanization within its geographical limits.

With the decision by the Governing Board to condemn their lands, the herein defendants applied to the Hon. Governor of Puerto Rico and requested the Governing Board itself to reconsider its decision. The then Acting Hon. Governor of Puerto Rico and the Governing Board each denied their respective appeals.

The Commonwealth of Puerto Rico, its agencies, instrumentalities, departments, public corporations, and political subdivisions including the Land Administration, have not adopted, nor do they have any plan, program or project whatsoever for the development of the lands to which this action refers, and none of said entities, or even private persons, have shown any interest in the same.

There is no "master plan" approved by the Planning Board for the San Juan Metropolitan Area or any part of the same. Neither has said agency approved any resolution which authorizes the Administration to specifically acquire the lands to which this litigation refers or to authorize it to develop any project whatsoever.

The Administration did not make any study whatsoever to determine whether the lands which are the subject of this section were vacant urbanizable lands and none of its officers visited the same.

It was established and it is thus found by this Court that said lands were not vacant when the application was filed, the same being devoted to the uses already expressed and they also being the subject of a development which was then in full execution.

That the Land Administration at the present holds lands in excess of 500 acres and does not have funds or money to pay the market value of all of the lands which it has been authorized to acquire, pursuant to the "Scope of the Project" approved for the San Juan Metropolitan Area and the Island.

CONCLUSIONS OF LAW

Act No. 13 of May 16, 1962 (23 L.P.R.A. 311 et seq.), known as the Land Administration Act of Puerto Rico created a corporate body of governmental instrumentality having its own juridical personality, independent of the

Commonwealth of Puerto Rico. The State presents the present action at the request of said agency under the provisions of the aforesaid Act and the General Condemnation Act of 1903, as amended.

From the statement of motives it appears that the act was approved for the purpose of facing the problem of the monopolization of lands, both urban and rural, by a small number of persons who do not use them thus creating an artificial shortage of lands provokes an accelerated increment in price. (The statement of motives which is not an essential part of the act, is not transcribed in the Laws of Puerto Rico Annotated (23 L.P.R.A. 311). It appears of record, nevertheless, including its statement of motives, as Exhibit VII of the plaintiff.) The shortage of lands and its exaggerated price constitutes a serious dwelling problem for persons having few or moderate resources, and creates for the State serious problems of a financial character and also in the rendering of its public service.

The problem itself is not peculiar to, or exclusive of, our Island. It has arisen and exists wherever there has occurred a great development in urban growth and in the population. It is a problem that takes root wherever free contracting with respect to the title of property of immovables governs as a system of law. (For example, see Denmark, France, India, Sweden, Norway, Great Britain and parts of the United States [Cf. *Urban Land:* Problems and Policies, Bulletin No. 7, Publication of the United Nations, 1953, IV, 22; *Current Information on Urban Land Policies — A Preliminary Report,* U. N. Secretarial Documents, ST/SCA/9, April 15, 1952]).

Several solutions have been proposed or adopted for carrying this out. Each and everyone confronts the difficult task of harmonizing within the frame of the prevailing legal system, the powers inherent in the right of private

property with such appropriate measures as may be proclaimed for the protection of the public interest.

As a general rule it is not a judicial function to decide the existence of this or that problem announced by the legislature, nor to judge the worth of the solution adopted. The judicial function is limited to a determination of the validity of the statute, considering the existing constitutional standards.

The Court cannot substitute its judgment for that of the legislative parties, but it may question the reasonableness of the legislative belief that an evil exists and of the remedy adopted. For this purpose, the Court has the power to investigate the facts which moved the legislature. *People* v. *Eastern Sugar Associates,* 156 F. 2d 316.

This task is made difficult in this case because of the fact admitted by the parties that the statute whose validity is questioned is without known precedent in the jurisdictions in which, as in Puerto Rico, the constitutional system of the separation of powers exists, and in which the right of the citizen to private property and the exercise of free enterprise is protected.

The defendants challenged the statute invoked by the condemnor, as well as the procedure observed, precisely on the ground that it damages the principle of the separation of power and it deprives them of their property without due process of law and it denies them of their right to the equal protection of the laws. Their validity will depend, of course, on the powers delegated, or the limitations fixed for its exercise and of the use made of such powers by the agency created. The determination of said challenge is in the last instance an eminently judicial function. *Nichols on Eminent Domain,* Vol. 2, Page 470, Sec. 7.4, *Wallbrook Irrigation District* v. *Bradley,* 164 U.S. 112, 41 L. Ed. 369; *Clark* v. *Nash,* 198 U.S. 361, 49 L. Ed.

10.5; *Rindge & Co.* v. *Los Angeles County,* 262 U.S. 43, 67 L. Ed. 1186; *U.S. ex-rel Tennessee Valley Authority* v. *Welch,* 327 U.S. 546, 90 L. Ed. 843; *Commonwealth of Puerto Rico* v. *Heirs Of Gautier,* 81 PRR 565; *Schechter Poultry Co.* v. *United States,* 295 U.S. 495 (1935); *Jaffe and Nathenson, Administrative Law — Cases and Materials* (2d. Ed., 1961), Page 95.

It is appropriate to examine the statute in the light of the challenge made to it, to determine, in the first instance, if it in fact violates the principle of separation of powers, if the powers delegated are stated with sufficient clarity, and of course, if said powers are subject to adequate standards for the valid and constitutional exercise.

A statute of the nature of the one now before us, pursuant to which the legislative power and the power of condemnation is delegated, must be strictly construed. *Puerto Rico Railway Light & Power Co.* v. *District Court,* 59 PRR 912; *U.S.* v. *2.4 acres of land,* 138 F. 2d. 295 (C. C.A., 111.; 1943); *U.S.* v. *8577.16 acres of land,* 11 F. Supp. 311 (D.C. W. Va., 1935); *International Commerce Commission* v. *Cincinnatti,* 167 U.S. 479, 42 L. Ed. 243.

It is striking that the act creating the Administration, does not, in its executory part define the public policy of the State, that is, the more or less precise formula adopted by the legislator to face the problem announced in the statement of motives, and the execution of which is delegated to the Administration. In this connection, it is only stated in Article 7 of the Administration that the Administration "may exercise all of the rights and powers that may be necessary or convenient to carry out all the purposes of this act" . . ., *without limitation* and by subsection (h) of the same article, it delegates to said corporate body, "full powers to attain the public policy of the Commonwealth of Puerto Rico, *as herein established*". (Emphasis supplied).

Although it does not form any part of the statute itself, *Spartenburg* v. *Leonard*, 186 S.E. 396, *Townsend* v. *State*, 47 N.E. . . .9; we shall commence with the statement of motives in a search for the definition or determination of the public policy in the solution of the problem stated in the act. The phrase "public policy" is employed in the following manner: "*The approval of the provisions of this act as a necessity of public policy* is hereby declared as legislative determination to be desirable". (Emphasis supplied). This expression of necessity does not define, nor does it state the "public policy the execution of which the Legislative Assembly delegated to the Administration, vesting it with full powers without limitation". (Article 7, supra).

Furthermore, the statement of motives emphasizes that the intention of the Legislative Assembly is that "the activities of the Administration . . . promote, in a planned and efficient manner, *the welfare, the economic freedom* and *the social justice* of the present and future inhabitants of Puerto Rico. . .; preserve *historical values* and the natural values of the land, the beaches, the forests, and landscapes; insure the best conditions of *health, safety and social life*. . ." (emphasis supplied), and continues to set forth a series of concepts without any particular definition, precision or delimitation of its scope and contents. It is to this language, loaded with factors like "greater and better services, speculative purposes, better utilization and profiting, more reasonable costs for the welfare of the inhabitants", etc., to all of which the statute necessarily refers in repeatedly mentioning the "ends and purposes" of the act.

The total absence of a clear and final definition of the specific public policy of the State vis-a-vis the evil which it is intended to resolve is a cause for deep concern. Considering the extraordinary powers which without limi-

tation are delegated to the Administration in Article 7 of the Act; considering that by subsection (h) above there have been conferred upon it full powers "to carry out the public policies of the Commonwealth of Puerto Rico", it appears that said agency has been vested with unlimited discretion. (It is proper to point out that the power of carrying out the public policy was subdelegated by the Governing Board to the Executive Director of the Administration. Cf. Exhibit "C" for the defendant, Minute Book of the Governing Board of the Administration, the minutes for the 1st of July, 1962, pages 18 to 21).

In a not very remote date, the late President John F. Kennedy addressed the Congress of the United States of America to warn that the statutes should not "phrase their objectives in terms so imprecise that they leave vast areas open to free administrative discretion". (H.R. Doc. No. 135, 87th Cong. 1st Session 2 (1961). To the same effect, Professor Marver H. Bernstein that "'legislative responsibility is abdicated when slogans are provided to an administrative agency instead of working criteria to define the public interest". *Regulating Business by Independent Commissions,* 1957, Page 236.

> "Certainly it would be better if Congress could be somewhat more specific at the outset. Where the conflicting forces are too great, *it is asking overmuch of an agency to make policy when Congress could make none.*"
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> Friendly, *The Federal Administrative Agencies — The Need for Better Definition of Standards* (1962), Page 13, (Emphasis supplied).

"The need for achieving better definition of standards in administrative adjudication appears to me so com-

pelling that I should hardly have thought the case had to be argued."

Idem Page 19.

Having already examined the statement of motives let us see what the statute itself provides. In article 3 it provides that the Administration shall be governed by a Governing Board composed by the Honorable Governor of Puerto Rico, who shall be Chairman; Chairman of the Planning Board, who shall be Vice Chairman; the Secretaries of Finance, Public Works and Agriculture; the Director of the Urban Renewal and Housing Corporation; the Administrator of Economic Development; and two additional members to be appointed by the Governor himself with the advice and consent of the Senate. (23 LPRA 311 (a) (b):)

Articles 4 and 5, respectively, create the offices of Executive Director and Secretary of the Administration. (23 LPRA 311 (c) and 311 (d), and in article 6 it is stated that the debts and other obligations of the Administration are its own and not obligations of the State, or of any agency, officer or employee of the latter. (23 LPRA 311 (e).)

The rights and powers of the Administration are set forth as we have seen in article 7 of the statute, 23 LP RA 311 (f), subsections (a) to (b-1), both inclusive. It establishes that the Administration may exercise "such rights and powers as may be necessary or proper for the carrying out of the purposes of this act" and clarifying that it shall not be understood as a limitation of said powers; the statute proceeds stating that they include, in addition to the usual entities of a similar nature (i.e., perpetual succession, adoption of bylaws, the power of ap-

pointment and approval of standards applicable to it, the power to adopt a seal,) those others itemized.

The powers mentioned in the different subsections of article 7 may be classified in 3 different categories, (1) those relative to the acquisition of goods and properties (2) those pertaining to the use, sale or disposition of its properties, and (3) those relative to its other activities or dealings. Thus classified, let us consider the powers conferred upon the Administration, emphasizing those guides or standards fixed by the statute for the exercise of said powers. Subsections (j), (n), (q), (s), (u), (x) and (y) of article 7 correspond to the first category, which is the acquisition of properties by the Administration.

By subsecton (j) the Administration is authorized to acquire properties in *any legal manner* including condemnation and to retain, preserve, use and take advantage or utilize any properties or any interests of the same that it considers, *"necessary or desirable to carry out its purposes."*

In its own behalf or in the behalf of the State, subsection (n) authorizes it to accept financial aid of any nature from the State or from its agencies, from the Government of the United States or its agencies or from *private persons.* With the agencies and governments it mentions the Administration could make contracts and transactions and invest the proceeds of the funds received *"for the purposes of this act"*.

By subsection (q) it is authorized to acquire *private property,* to reserve it *"for the benefit of the people of Puerto Rico"* for the use of the Commonwealth or its agencies, provided that, when properties are condemned *"for specific purposes of public works development and social welfare"*, such purposes shall be carried out within a term not to exceed 15 years.

Subsection (s) authorizes it to acquire *real property*

which it may reserve to facilitate the *continuation* of the development of the programs of *"public work and economic welfare"* which is being carried out or may be carried out by the Administration, the Commonwealth of Puerto Rico, its agencies, or *private persons* for the benefit of said public entities or of the community". . . for the purpose of preventing the inflation produced by *"speculative practices* in the purchase-sale of real estate and to allow for populational growth in an organized and planned manner".

The Administration is permitted to barter its properties for the purpose of "improving the utilization of lands", pursuant to subsection (u) and, by subsection (x) it is authorized to acquire *any right, interest or easement in any property to*: "promote *the development of open areas,* protect the bodies of water, protect the public from floods, to preserve soils and forests; to preserve *the beauty of places devoted to public use*; and to facilitate the use and development of areas reserved for *projects of public interest"*.

Because of its relation with the preceding ones, we make mention to Article II of the statute, 23 LPRA 311 (j). The public corporations are authorized to convey to the Administration at its request and "under reasonable terms and conditions that they mutually agree upon" without the necessity of public bidding or other formalities of law, any property, including properties already devoted *to the public use,* that the Administration may deem necessary or convenient to possess "for carrying out its own purposes". The Secretary of Public Works, free of all cost, may transfer to the Administration, with the approval of the Governor such State Lands which said Administration may need "to carry out its purposes".

On its face, the articles to which we have referred impose a single limitation on the Administration's exer-

cises of its power to acquire properties: its own determination that this acquisition or the properties in themselves will be "necessary or desirable to carry out its purposes", subsection (j); "for the purposes of this act", subsection (n); "for the benefit of the people", subsection (q); to reserve lands "towards facilitating the continuation of the development of public works and social and economic welfare programs", for the benefit "of the community" and "to prevent the inflation brought about by speculative practices", subsection (s); for projects of "public interest", subsection (x); or "for the effectuation of its own purposes" or "effectuation of its purposes", article 11 of the statute.

In subsection (k), (l), (w), (z), (a-1) and (b-1) of article 7 and in article 14, the law refers to the power of the Administration to dispose of its properties. In the first of said subsections it is authorized to sell and dispose of these *"in the course of its normal operations"*, except by gifts, which it may only be made in favor of the State or its agencies. It does not state how, when, in what manner or under what conditions it may dispose of its properties; but said subsection clarifies that no disposal of property or of any right that the Administration may effect at a lower price than it paid or a price lower than its market value "in the fulfillment of the purposes hereof", shall be considered a gift.

Subsection (l) authorizes it to sell or dispose of any property which *in its judgment* is no longer necessary, "to carry out the purposes of this act", although subject to the same limitation referred to in the preceding subsection (k).

By subsection (w) it is authorized to carry out by itself, through, or jointly with agencies of the Commonwealth of Puerto Rico or the Government of the United States or through agreements with *private persons or entities,* pro-

grams and works,... to insure *the most effective development and the fullest utilization* of lands which are the property of the Administration, of the State or its agencies, "in keeping with the purposes of this act".

In subsection (z) it is provided that in disposing of any real property it may *establish those conditions and limitations* with respect to their use and utilization, *as it may deem necessary and desirable,* "to insure the fulfillment of the purposes of this act", so that the use made of said property will not facilitate the creation of *undesirable conditions or conditions adverse to the public interest* which the law aims to protect.

The same subsection provides that if the Administration sells property with the purposes of having the purchaser urbanize it or develop *any type of project* which assumes a subsequent sale to private persons it may agree upon the restrictions *it may deem necessary* "to carry out the purposes of this act", it being its duty to include one that "through a proper formula" *limits the profits which with respect to the land and every other cost of the project will be had by the purchaser.*

Subsection (a-1) permits it to transmit in perpetuity or for a limited time, to urbanizers, *for housing development,* and to other persons, *to execute any work of social interest,* any real or personal right or any interest in its lands.

By subsection (b-1) the law empowers the Administration to sell its lands "whenever it may deem it necessary and desirable", and at a price it may consider *"reasonable" to lower the cost of the dwelling* or to effect "any of the purposes of this act."

Article 14 (g), 23 LPRA 31 (g), must be examined together with subsection (1) already mentioned. If the property acquired *by condemnation* should cease to be useful "for the purposes of this act" or "for the public

purposes of the State or any of its agencies", this article says that preference shall be given to the former owners, or to their heirs, subject to *"the condition . . . which the Administration may establish"*. With the exception that it cannot sell the property to the former owner for a lower price than its market value at the time of the sale, the statute does not establish any yardstick whatsoever for the Administration's guidance in fixing the *conditions* it may impose for the alienation of said property.

In the foregoing subsections which empower the Administration to sell or dispose of its properties, there is a like absence of any guide as in the subsections pertinent to the acquisition of properties. As in those, phrases which are similar to the ones already mentioned are repeated.

Subsection (1) authorizes the Administration to sell its properties whenever *in its judgment* they are no longer necessary "to fulfill the purposes of this act". Subsection (w) as an only limitation establishes the phrase "in keeping with the purposes of this act", (a-1) refers to works of "social interest"; and (b-1) employs terms such as "reasonable" and "any of the purposes of this act".

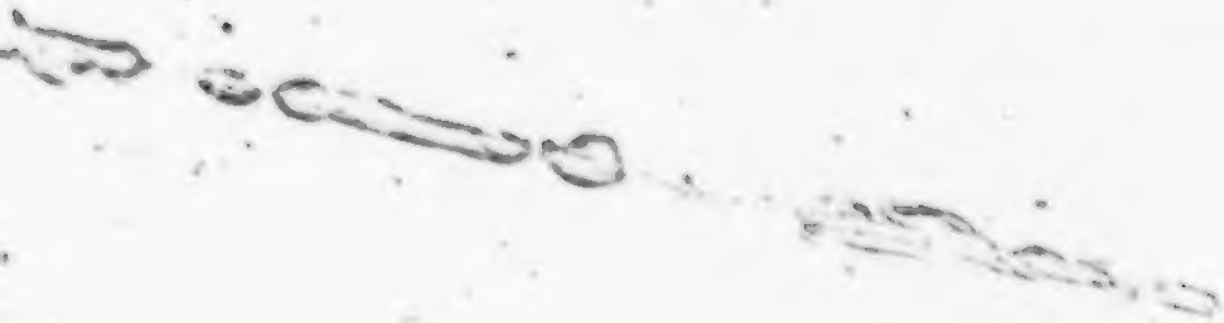
Subsection (z) sets up as the only criterion "to insure the fulfillment of the purposes of this act" and "a proper formula" to restrict the profits of the grantees of the lands belonging to the Administration, and does not furnish it with any yardstick or standard whatsoever indicating the meaning of the phrase. No basis is established for a determination of the efficiency of the formula to be adopted. The absence of the legislative yardstick will, of necessity, bring serious difficulties in the application of the statute, without providing any of the methods necessary to test its efficacy.

Subsections (o) and (t) of article 7 regulate the exercise of the powers delegated to the Administration to carry out its other activities. By subsection (m) it is permitted

to borrow money and to issue bonds, guaranteeing their payment and payment of its other obligations by *any kind of encumbrance* upon all of its goods and properties. Subsection (o) gives it complete dominion over its properties and activities, *including the power to determine the character and the necessity of all of its expenses and the method of authorizing and paying them and how they are to be included, authorized or paid.* The Administration is relieved of taking into consideration any provisions of law regulating the expenditure of public funds and its determination in this respect shall be final and definitive for all of the officers and employees of the State, without prejudice to examination of the accounts and books of the Administration by the comptroller, never to be less than once a year, with a report by him of the result of his examination to the Legislative Assembly, the Honorable Governor and any other officers he believes pertinent. (Cf. Art. 10 of the Act).

In addition, subsection (t), empowers it to stimulate and participate *in the preparation of new areas . . . within the frame of standard that will insure the best balance within the necessities of future communities* and, to that end, it may develop programs for the acquisition of the necessary lands and to start *all types of projects which encourage such developments,* by itself, through or by governmental agencies or private entities.

The discretion conferred upon the Administration in carrying out these activities is unlimited. No limitation of its authority is stated in subsection (m); subsection (o) grants absolute freedom, and subsection (t) refers to "policies which will insure a better balance with regard to the needs of future communities". Subsection (t) does not define the policy. Neither does it define nor explain the different terms it uses in announcing that series of



factors which must be given consideration by the Administration.

In our environment there exists constitutional limitation for the acquisition, disposition and use of funds and properties of the Administration, apart from those general diluted factors which appear in the statute. Section 9 of Article VI of the Constitution of the Commonwealth of Puerto Rico provides: "Public property and public funds shall only be disposed of for public purposes, for the support and operation of state institutions and pursuant to law". This constitutional provision prevails over any provision in the act creating the Administration. The latter, of course, is superseded by, and must be construed, subject to the former.

The properties and funds in the possession of the Administration have a public character. They can only be disposed of by authority of law. If "the law" for the disposal of these public funds is to be written by the Administration itself in the exercise of its power to adopt rules and regulations conferred upon it by subsection (e) of article 7, the total absence of appropriate guides for the disposal of those properties permits a situation which destroys its constitutionality.

This situation is aggravated if one considers that the statute relieves the Administration from taking into consideration any provision of law regulating the expenditure of public funds, gives a final character to the determination made by said agency and supersedes any other provision of law to its own precepts. Not less significant is the fact that the Governing Board has not approved any rule or regulation whatsoever to govern the activities of the Administration, as required by the act, and that the act itself does not present any standard or yardstick whatsoever to guide the Administration whenever it should decide or resolve to approve its own regulation.

For failure to provide any judicial review whatsoever of the actions of the Administration, except in cases of condemnation such as the present one, the constitutionality of the act is extremely precarious. Article 19 of the act forbids the issuance of "injunctions" to stay its application or that of any of its parties, thus ratifying the general provision of the Act to Define Injunctions, etc., which forbids the issuance of injunctions to prevent the application of a law (32 LPRA 3524) Cf. *Las Monjas Racing Corporation* v. *Racing Commission*, 67 PRR 42. Another limitation against all judicial review of the actions of the Administration is contained in article 2 of Act No. 2 of February 25, 1946. (32 LPRA 3074).

Equal or greater taints of unconstitutionality permeate the statute (subsections (q) and (s)) where it authorizes the acquisition of land for "reserves". Said subsections are different from each other. The one designated under letter (q) refers only to private property, whereas (s) authorizes the acquisition of immovable property, urban or rural. They differ further, in that private property acquired under subsection (q) shall be for a reserve "to the benefit of the people of Puerto Rico, for the use of the Commonwealth of Puerto Rico or its agencies"; and the immovable property which is acquired under subsection (s) shall be reserved towards "facilitating the continuation of the development of public works and social and economic welfare programs which may be under way or which may be undertaken by the Administration itself, by the Commonwealth . . . or its agencies, and by private persons . . . in order to prevent the inflation brought about by speculative practice in the purchase-sale of real estate and to allow for populational growth in an organized and planned manner".

Both subsections fail to fix any term with which the Administration must dispose of the properties acquired

for a reserve, except that if they are acquired by condemnation for specific purposes, for the development of public works and social welfare, the said purposes must be realized within a term of 15 years.

Because of the generality of the terms, in all of their aspects, the cited subsections are ambiguous and vague. They suffer the same defects that prevail in the statute: the lack of guides and yardsticks to govern the Administration in the acquisition, use and disposal of its properties or even in the adoption of the regulation which it must adopt to govern the standards of its activity in general and the performance of the other powers delegated to it by law. Such ambiguity and vagueness makes it difficult to consider and decide whether the reserve thus authorized constitutes or may constitute, a legitimate public purpose. From the face of the statute no facts appear which permit a declaration thats aid reserve, of itself, constitutes a public purpose, inasmuch as it does not state any specific purpose whatsoever for any such reserve.

Plaintiff has not cited, nor have we found, a similar situation or any precedent whatsoever in the State and Federal jurisdictions. The Statement of motives, nevertheless, declares that the reserve of lands is of itself a public purpose.

The weight of authority sustains, on the contrary, that the acquisition of lands for future uses is only justified when based upon present necessities. *Nichols on Eminent Domain,* 1963 Vol. 1, Cumm. Supp., Page 109, Addition to Text at End of Subsection 4.11(2).

If the declaration made in the statement of motives presumes to authorize the Administration to condemn lands with the purpose of creating a reserve leaving to the discretion of said agency the determination a posteriori the use to which it may be devoted, insofar as it thus provides, the statute is unconstitutional. We wish to point

out, of course, that if the condemnation is for a public purpose and the use to which the property is to be dedicated, is established, the acquisition may be in excess of the immediate necessities or those which are incidental to the purposes of the taking. *Mercado* v. *District Court,* 85 PRR 354, *Rindge & Co.* v. *Los Angeles County,* 262 U.S. 700, 67 L.Ed. 1186.

There is no constitutional problem whatsoever when the Administration condemns lands to reserve them for the purpose of aiding the development of definite housing projects and in aid of industrial development which by way of example are mentioned in article 7 (s), or in aid of the development of known programs, implemented by other agencies to which the power of condemnation has also been delegated. In short, every condemnation is valid, when it pursues a public purpose.

On the contrary, any condemnation proceeding in which a determined public purpose for which the condemnation proceeding is prosecuted is not alleged and proved, and where as a matter of fact and of law, said public purpose is not established to the satisfaction of the Court, lacks constitutional validity and support.

The approval and adoption of a general and comprehensive plan, which specifically points out the areas where the necessary and useful properties are to be acquired, is the administrative measure which would with the greatest certainty insure the acquisition of lands for a reserve in an intelligent manner. If the function delegated to the Administration is considered as a liaison or cordination with the other departments or agencies of the State, the adoption of a detailed and complete plan is a prior and indispensable requirement of the accomplishment of those purposes. The State, through the Administration, or through its other agencies, has not adopted any plan whatsoever to such effect.

Once it is acknowledged that the power to condemn for future expansions of public works is not unlimited, the necessity of a plan becomes imperative. The power of condemnation is restricted whenever no plan whasoever is known and the condemnation proceedings under an alleged program of vague conception, when the necessary public funds for its execution are unavailable, when sufficiently precise plans to carry it out do not exist. *Winger* v. *Aires,* 89 A.2d 521 (1952); *Truit* v. *Borough of Cambridge Water Authority,* 133 A. 2d 797 (1957); *State* v. *Chang,* 378 P. 2d 882 (1963); *Board of Education* v. *Baosewski,* 65 NW 2d 810 (1954). Even in foreign jurisdictions, where the problem has arisen, a condemnation in excess of the necessity for lands or goods was declared unconstitutional. 33 *Decrees of the Supreme Court of the Argentine* 162 (1888); Entacheideningen, etc. Vol. 31, 1905 Part 1, Page 645. Definitely, therefore the extent of the lands to be condemned can not be determined arbitrarily by the State.

The possibility that the condemnation in this case is for known purposes of housing or industrial development having been eliminated and considering that no other governmental agency is interested in defendants' lands, there is only one possible objective left for the present condemnation to avoid the concentration of lands in the hands of private persons for speculative purposes.

The Act does not define the terms "concentration of lands" or "speculative purposes". Its definition or meaning was left open, subject to the will of the Administration. This lack of precision is perpetuated by the absence of a master plan approved by the Planning Board and by a regulation adopted by the Administration itself as required by the act. Pertaining to this point in particular that is, the acquisition of lands for public works definite and known, see Section 10 of the Act creating the Planning

Board (23 LPRA 10 et seq.), which authorizes the approval of a regulation by the Board to include a minimum area to be reserved for schools, parks and other public purposes. See, in addition, *Zayas* v. *Planning Board,* 69 PRR 27 and *Segarra* v. *Planning Board,* 71 PR 139.

The legislature enjoys great discretion in legislating with respect to the natural resources of the country. *Conway, et al.* v. *New Hampshire Water Resources Ed.,* 199 Atl. 83 (1938). When the legislation is dealing with civil rights such as that of property, on the contrary, the legislature must be as specific as possible and extremely careful if it delegates its powers. *Schecter Poultry Corp.* v. *United States,* 295 U.S. 495.

On occasions the necessity for specific standards may be obviated. The law may refer, and may apply to, administrative and juridical situations which are so well known, and of such tradition, that the required standards arise from them. In order to implement the rule no explanation whatsoever is required because the benefit of the precedent is considered and a definite manner of acting is available. *Fahey* v. *Hallonie,* 332 U.S. 245. In this case, nevertheless, no precedent whatsoever exists for this legislative piece nor has the practice of creating reserves been approved as a sufficient public purpose.

The question of the extent to which the legislature must define its policy and set its standards in such a manner that any delegation it may make does not violate the constitutional provision limiting it, is a subject which cannot be defined with mathematical precision. Even when the standards are defined with precision, and its constitutional validity is sustained, even under such assumptions, a delegation of powers always lends itself to an abuse of discretion. *Litcher* v. *U. S.,* 304 U.S. 742, 779.

The ambiguity of the organic statute of the Administration is accentuated when subsection (q) aforesaid is

confronted with article 14, subsection (g), and analyze them, in the light of the provisions of Act No. 441 of the 14th day of May 1947, as amended (28 LPRA 14). They refer to the terms with which the public work for which the condemnation is made and they regulate the right of expectancy that the condemnee has to reacquire his former property when the same ceases to be of public utility.

It is not known what reason moved the legislator, if any, to fix a time of 15 years, and not another one, to carry out the specific purposes of development of public works and works of social welfare for which power to condemn was granted. The reasonableness of this period of time will depend, in the final analysis, on the existence of definite plans and programs for a public work in particular and on the funds available for carrying out the work.

The right of reversion, no longer in expectancy which arises upon the expiration of the 15 years, if the public purpose has not been fulfilled, points out additional problems which are worthy of consideration. The statute does not mention which action or judicial proceeding can be instituted by the condemnee, nor does it say whether it may be presented against the State in the event the property is in the latter's hands. Neither does it fix any term within which the corresponding action must be commenced after which the Administration might freely dispose of this property.

The reserve for a period of 15 years only and, with greater reason, the unlimited reserve, in time and amount, with no contemplated public purpose or use whatsoever, permits the employment of the power of condemnation for the only purpose of permitting the Administration to profit from the natural increment in the value of the land. Although the lands may be occasionally used for a legitimate public purpose, the acquisition of lands at the present

time, at the present price, to maintain them for an indefinite period of time without using them until they have increased in value, constitutes a permanent temptation for the later sale in the open market with the purpose of obtaining gains or profits for the agency. It is an inevitable conclusion, that this temptation, may become a reality, in view of the provisions of article 7, subsection (1), which expressly authorizes the sale of any property of the Administration "which in its judgment is no longer necessary for fulfillment of the purposes of this act."

The Act creating the Administration does not contain sufficient standards, clear and precise to guide it and limit it in the exercise of the extraordinary power delegated to it. The legislator could have defined his intention, establishing such limitations as are proper and necessary to avoid so broad a delegation with such imprecise standards. (*Schecter Poultry Corp.* v. *United States,* supra). The legislative history of the statute does not reveal any effort whatsoever on the part of the legislator to avoid the existence of the defects pointed out in the text of the legislation. *U. S.* v. *Royal Co-op.,* 307 U.S. 533.

The absence of a remedy at law or in equity already mentioned, and of adequate standards to govern the Administration in the acquisition, use and disposal of its property in a reasonable form and in compliance with the imprecise legislative intention, joined to a possible speculation in the acquisition and sale of lands to which this statute lends itself, *taints* the provisions we have commented *with unconstitutionality.*

The absence of an adequate standard in the act was not filled by the Administration itself if indeed this was the intention of the legislator. Although Art. 7, subsection (e) does not fix any pattern whatsoever for administrative conduct, nor does it circumscribe with appropriate limits the activities to which it may refer, it at least requires

that the Governing Board approve a regulation to govern the standards of the Administration in its general activity and in exercising and fulfilling the powers and duties conferred upon it by law. The Administration selected, nevertheless, not to adopt any regulation whatsoever in order to operate with "greater flexibility". No explanation is given for this disobedience of the command of the law and of the manifest intention of the legislator as they were expressed in the report which the Joint Committee rendered on the bill.

The Planning Board has the legal obligation to adopt and approve a regulated plan for the San Juan metropolitan area, following the procedure stated in the law, which includes the holding of public hearings, due publicity and its approval by the Honorable Governor. In the same manner, the acquisition of goods and properties by the Commonwealth of Puerto Rico and its agencies must receive the approval of the Planning Board and must be in harmony with the master plans. 23 LPRA 23; *Borinquen Home Corporation* v. *Planning Board,* 69 PRR 194. Far from exempting the Administration from compliance with the last condition—which has not been complied with in the case at bar—its organic statute reiterates that it must carry out its activities, and of course, create a reserve to aid the State to execute its public policy of industrial, commercial and housing development "in harmony with the Master Plans".

The scope of the project which was described in the findings of fact, does not state the utilization or specific use to be given the lands whose acquisition it purports to authorize, nor does it state the date or occasion on which they may be acquired. The scope of the project and the evident intention of article 14 subsection (f) of excluding all increment in the evaluation of the lands to be acquired, to authorize the Administration to condemn

through the payment of a price lower than that which is normally prevailing in the market.

To the extent that it permits and authorizes the Administration to acquire private property for that lower price denying to the owner his right to a just compensation, the statute itself and the scope of the project are contrary to our Constitution and the Constitution of the United States of America as they deprive the citizen of his property without due process of law. *U. S.* v. *Felin & Co., Inc.*, 344 U.S. 624; 92 L. Ed. 1614; *People* v. *Succession McCormick, Alcaide S. en C.*, 78 PRR 895; *Miller* v. *City of Beaver Falls*, 82 A. 2d 34 (1951). There is no precedent whatsoever that justifies the freezing of the sales price of the fee simple title to immovable properties. Nichols, *On Eminent Domain*, Vol. 4, Page 96, Section 12.311.

The approval of the scope of the project is not a valid basis, justifying the action of the Planning Board in rejecting the consultation respecting the location and preliminary plans filed by the defendants for the development of the lands. Neither can such scope exercise nor substitute the functions of a master plan. It does not contain the conditions precedent for its approval.

The resolution of the Planning Board approving the consultation submitted to it by the Executive Director of the Administration authorized the acquisition of *vacant urbanizable lands* included within the geographical area delimited on the plan which accompanied the same. Considering that said resolution is the authorization to take required by law the Administration should limit itself to the mandate of the Planning Board and acquire only vacant urbanizable lands. It having been determined that the lands which are the object of this litigation were not, nor are vacant, the Administration lacks legal power to condemn them. The acquisition by the Administration is not therefore, and cannot be in harmony with any Master Plan.

Having analyzed the authority invoked for this condemnation, having pointed out its defects and vices, we should now take up the challenge made by the defendants to the averments of the complaint respecting the use for which the property is being condemned.

It is a constitutional principle deeply rooted in our democratic system, which is a system of laws, in which private property can only be taken or prejudiced for a public use, through the payment of a just compensation and by the means provided by law. *Constitution of the Commonwealth of Puerto Rico,* Article II, Section 9.

It is unnecessary to expand on the rule that the power to condemn can be delegated. The General Condemnation Act of Puerto Rico (32 LPRA 2901-13), together with Civil Procedures Rule 58, 1958, govern the procedure and the requirements to be filled in exercise, of this power, whether by the Government itself or by the entity to which it has been delegated.

As a procedural requirement, both rules require that the public purpose of the condemnation must be expressly alleged in the complaint, and the property to be taken must be described in detail. See Federal Rules of Civil Procedure 71 (A) (c) (2) which establishes the same procedural requirement, and Nichols, *On Eminent Domain,* Vol. 6, Page 113, Sec. 26.111.

The Administration is subject to the procedural rule indicated when it exercises the power to condemn which was delegated to it by Article 7, subsection (j) of the act. The power to condemn, of course, may be exercised by the Administration itself or if an immediate taking is contemplated, as in this case, through the Commonwealth of Puerto Rico. (Cf. Arts. 12, 13 and 14 of the Act Creating the Administration).

"The sufficiency of the averment relating to the contemplated use, as well as the public nature thereof having

been attacked, it is the duty of this Court to determine and decide, definitely, whether the purpose stated constitutes or not a public use. This determination requires that the Court consider the particular facts and circumstances present in this case," *Commonwealth* v. *Heirs of Gautier,* 81 PRR 565; *City of Knowville* v. *Heth,* 210 SW 2d 326; *Fallbrook Irrigation District* v. *Bredley,* 164 U.S. 112, 41 L. Ed. 369; *Clark* v. *Nash,* 198 U.S. 361, 49 L. Ed. 1085; *Rindge & Co.* v. *Los Angeles County, supra; Old Dominion Land Co.* v. *U.S.,* 269 U.S. 35, 70 L. Ed. 162; *Nichols on Eminent Domain,* Vol. 2, Page 470, Sec. 7.4.

The question of public use cannot be approached dogmatically and should be considered in a realistic manner, deciding each case on its own merits. The term "public use" cannot be defined in contraposition to the concept of "private use". *Green* v. *Frazier,* 253 U.S. 233, 240. The concept "public use" is not susceptible of a precise definition. Nichols, *On Eminent Domain,* V[illegible]2, Page 429.

In the interpretation and application [illegible]e term, the so-called liberal doctrine prevails in thi[illegible]diction. The concept "public use" was adopted in the Constitution of the Commonwealth of Puerto Rico with the meaning impressed upon it by previous judicial decisions. *Commonwealth* v. *Fajardo Sugar Co.,* 79 PRR 303. Laws of condemnation, as well as the statutes which delegate the legislative power or which interfere with the right of property, nevertheless, should be restrictively construed. *P.R. Ry. Light & Power Co.* v. *Court,* 59 PRR 912; *United States* v. *2.4 acres of land,* 138 F. 2d 295; *International Commerce Commission* v. *Cincinnatti,* 167 U.S. 479, 42 L. Ed. 243.

The parties cite the same cases in support of their respective contentions pertaining to the public character of the use alleged in the complaint and the sufficiency of the pleading in this sense. In *Fallbrook Irrigation District* v.

Bradley, supra, it was decided that the irrigation of really desert lands is a public purpose and, consequently that the properties necessary for carrying out this purpose are vested with public utility. Applying this doctrine, in *Clark* v. *Nash, supra,* the authority conferred to a private party to condemn the lands which would facilitate the irrigation of his private property was upheld; but the Court warned that this did not establish a general rule in the sense that private property could be taken, in any case, in order to promote the public interest. It was stated that the decision rested on the peculiar facts in that case.

In *Hairston* v. *Danville & W. Ry. Co.,* 208 U.S. 600, the doctrine of the two preceding cases was applied to the condemnation of lands to be used for a railway spur. It was said that taking into consideration the facts of the case, and certain testimony in particular, without saying which, the use was clearly public.

When lands where warehouses of the Quartermaster of the United States Army were located were condemned, and it was alleged that the Secretary of War had for his only purpose the saving of the cost of the buildings and not the public use of the lands, it was decided in the case of *Old Dominion Land Co.* v. *United States,* supra, that the declaration by Congress when making the appropriations for the acquisition of said lands, which it called sites for military purposes and for Quartermaster warehouses, deserved the greatest deference until it was shown that the declaration involved "an impossibility".

In *U.S. ex rel T.V.A.* v. *Welch,* 327 U.S. 546, 90 L. Ed. 843, the question was whether T.V.A. had the legal power to condemn certain lands, and whether the law, if it did have such power, was constitutional. T.V.A. had constructed a dam, the water of which covered a highway isolating a considerable tract of land and its inhabitants. Four governmental agencies were in charge of the

problem. It was agreed that T.V.A. condemn and later transfer the land to another agency which would use them for a public purpose: a national park. The Supreme Court of the United States considered all of those transactions as a single integrated effort to solve the problem which had arisen, and pointing out that the responsibility of T.V.A. was not limited to the construction of dams, but also that it was concerned with everything relating to navigation, flood control, etc., in the Tennessee Valley, it concluded that the condemnation was for a public purpose. More relevant to the case at bar is *People* v. *Eastern Sugar Associates,* 156 F. 2d 316 (1941), in which the constitutionality of the Puerto Rico Land Law was under consideration. Lands were being condemned to implement the agrarian reform pursuant to the law, the objectives of which were to provide squatters with means to acquire parcels of land without cost to them and revive the sugar industry in the Island of Vieques. The defendant challenged the public use and alleged that the action was in violation of the due process of law. The Land Act provided, and the complaint alleged, certain specific uses. The Court held that those uses, as alleged in the complaint, were of public nature. The public purpose in that law arises from the all inclusive plan it adopts to terminate the absentee ownership existing in the island of Vieques and to rescue the squatter from the conditions in which he was living. The final disposal of the land to be acquired was necessarily incidental to the essential and basic program announced in the statute.

Under said law there was no possibility whatsoever that the Government might speculate with the lands acquired as a result of that program. An examination of its text immediately gives the idea of public use. It does not transmit the impression that it seeks the obtaining of a profit, nor does it offer the opportunity of having great tracts

of transferred land to private persons without taking into account a public use.

The Land Act was also construed in *People* v. *Saldana,* 69 PRR 663. The complaint alleged specific uses and the pertinent allegations permitted the conclusion that the contemplated use was of a public nature. In *State* v. *Fajardo Sugar Co.,* supra, the condemnation was at the request of the Puerto Rico Industrial Development Company for the construction of an industrial plant on the lands condemned. The public use was questioned and a violation of due process of law was alleged, because it permitted the condemnation of private property for its resale to private persons. The creation of new sources of employment for the increment of the economy of the island, integrated to different elements that gather other legislative measures connected with the purposes of the Industrial Development Company act, made the condemnation one for a public use.

The constitutionality of the urban renewal laws approved in Puerto Rico (17 LPRA 101-119, was considered in *Commonwealth* v. *Heirs of Gautier,* supra, where it was alleged that the statute permitted the acquisition of private property by condemnation for a subsequent sale to private persons. The objections to the statute were rejected by the Honorable Supreme Court of Puerto Rico. In those laws the public use was the elimination of slums or decadent areas to protect the health, safety, morals and welfare of the community. The subsequent sale of the land was incidental to the principal objective of the statute which was the elimination of slums and preventing their increase. According to the statute and the opinion of the Court, the program for the disposal of the lands to be acquired had to be carried out in harmony with the reurbanization plan approved by the Planning Board (17 LPRA 103 (5)), and the transfer of the title had to be effected

subject to the restrictions insuring the use of the land "in accordance with the reurbanization project". Once the objective of eliminating the slums was complied with the limitations imposed upon the transfer of the lands constituted, and constitute, an adequate guarantee that the public use had been insured during the phase of the distribution of the property.

In order to guarantee the public interest it is indispensable that the State have control of the disposal of the properties, *City and County of San Francisco* v. *Ross,* 229 P. 2d 529 (1955).

In the case of *Gautier,* supra, *Berman* v. *Parker,* 348 U.S. 46, is cited with the purpose of rebutting the allegations of the complaint; but the Honorable Supreme Court does not adopt the rule of that case without making a reservation of power for the Court. In effect the Court says that "in so doing we reserve, naturally, our power to give specific content in future cases to the generalizations included in those paragraphs in accordance with the legislative mandates and the particular circumstances of those cases and our medium."

Concomitantly to the problem of public use there arises the question of public utility and necessity in every condemnation. Article 13 of the Act Creating the Administration declares that all properties which are necessary "to carry out the purposes of this act" are of public utility, as well as all works or projects carried out by the Administration. This declaration requires an analysis of its legislative precedents.

Under General Condemnation Act the power to make the declaration of public utility was originally vested on the Executive Council, and subsequently, on the Honorable Governor. If the legislature adopts another method to make a declaration of utility the method furnished by the General Condemnation Act of course becomes unneces-

sary, *People* v. *Rabel,* 36 PRR 116. Likewise if the legislature itself makes a declaration of public utility of the properties whose acquisition it authorizes, *Commonwealth* v. *Fajardo Sugar Co.,* supra.

There is a marked difference between the declaration of public utility which appears in the law creating the Administration and the declaration authorized by the General Condemnation Act. The declaration of utility contained in the act creating the Administration deprives the citizen of the rights which favored him in the General Condemnation Act. In effect, under the latter the declaration of public utility requires a previous hearing in all cases for the interested parties "respecting the necessity for a better public service and a better execution of the work to that end. . ." 23 LPRA 2902. The declaration in the organic statute of the Administration, vesting a priori all necessary properties with a public utility "for the purposes of this act", or any work which in the future is conceived by and the Administration wants to carry out, without in any manner limiting the nature, the purpose or proposition of the work, imparts such a vast and extraordinary delegation that, as occurs in this case, in the absence of a specific allegation of public purpose to which the properties are to be destined, it cannot be said that the legislature made a judicious declaration of public utility. The legislature could not have had before its consideration, nor has this Court any indication whatsoever revealing what was the "public use" to which the Administration intends to devote the properties it seeks to condemn.

If indeed it be known that the declaration of utility which is made in organic statutes of other agencies with power to condemn does not differ fundamentally from this provision which appears in the act creating the Administration, the validity of the same has been judicially

acknowledged, the governmental instrumentalities to which those laws refer, operate and proceed within a legislative field that has already been defined, with specific objectives which regulate their actions and activities. The standards governing the activities of those other agencies contrast by this precision with the vague standards, on occasions totally absent, which are fixed to guide the Administration.

It should be noticed that, relying on the act creating the Administration, the State is in a position to institute a condemnation to carry out a project, which in the absence of the act, would ultimately have to be processed through the General Condemnation Act.

The decision as to whether there exists or does not exist the necessity for a condemnation is a function that is vested on the judicial power. The exercise of this function attains greater importance when manifest abuse of discretion is alleged and proved. *Wins* v. *Cary,* 34 N.W. 813.

The "necessity" that justifies a condemnation is that which presently exists or which may exist in the immediate future and its existence is necessary both for the condemnation and the public work contemplated. A future, indefinite, remote or speculative necessity is not sufficient. *Board of Education* v. *Baosewski,* 65 N.W. 2d 810. If the legislature authorizes the condemnation and the requirements of due process of law are complied with, then of course, the owner cannot request a judicial revision to question the legislation finding that the public improvement is of necessity and convenience unless the public use alleged is a mere simulation or excuse. Nichols, *On Eminent Domain,* Vol. 1, Page 375-376, Sec. 4.11 (1).

The case of *Mercado* v. *Superior Court,* supra, is inapposite because it contemplates a different situation. At the time that case was being prosecuted the public use

to which the property was to be dedicated had already been determined, *Commonwealth* v. *Fajardo Sugar Co.*, supra, and the only thing questioned by the defendant was administrative discretion used in selecting the lands in question and their adaptability for the proposed use as well as the availability of other similar lands.

In view of the allegation of the defendant in this case that there is no public use for the condemnation, it is the duty of this Court to investigate and decide whether or not "any necessity" exists for the taking of defendant's properties.

> "Whether there is any necessity whatever to justify the taking is, however, a judicial question, and as taking without necessity in such a case would be unauthorized, the courts may hold it to be unlawful without the reluctance they feel in declaring acts of the legislature unconstitutional."
>
> Nichols, *On Eminent Domain*; Vol. 1, Sec. 4.11 (3), page 380, Quotation on page 385.

Rule 58 of the Rules of Civil Procedure, as already stated, requires a specific averment of the public use. The public use constitutes without any doubt, the gist of legal problem in every condemnation case. The determination of a public use must precede the final declaration of the case.

A condemnation complaint must contain a precise averment pertaining to public use, specifying the purpose for which the land is to be acquired. If necessary this purpose must be connected with an equally clear and precise resolution of the governing body of the entity authorizing the condemnation.

There is no doubt that the allegation respecting the public use made in the complaint is ambiguous and vague of equal ambiguity and vagueness are resolution numbers

five and six of the Governing Board of the Administration. The proof offered in evidence did not cure the substantial defect in the pleadings. The answers of the Commonwealth to the requirements for admission and the interrogatories submitted to it by the defendants and offered in evidence as well as the statements in open court by counsel for the condemnor, acknowledge that the condemnation is not for a specific public use but rather for the general ends and purposes framed by the act creating the Administration. Private property and, as a corollary, the lands to which this litigation refers cannot be condemned *for an unrevealed use. Cincinnati* v. *Vester,* 281 U.S. 437.

No public use according to law having been alleged or proved in this case, this Court must decide and hereby decides that no public necessity whatsoever justifying the acquisition by the Commonwealth of defendants' property exists.

Plaintiff prays in its complaint that this Court grant the condemnation relying on the broad and ambiguous terms of the Act Creating the Administration, the Resolution of the Planning Board approving the letter-consultation submitted to it by the Executive Director of the Administration, on resolutions five and six of the Governing Board of the Administration and on the averment of its complaint. In order to grant the remedy requested, this Court would be compelled to consider hypothetically all of the possible and indefinite uses to which the Administration desires to dedicate the properties which are the subject of this action, and that it determine that none of them are repugnant to the rights which the Constitution of the Commonwealth of Puerto Rico and the Constitution of the United States of America guarantee every land owner. We will have to assume that any use which the Administration decides to give these properties must be

constitutionally valid, without the subjection of the Administration in this regard to a precise definition of its purposes, or to formulate some hypothesis in respect to the final use of the same to decide in favor or against the condemnation, even though the certain, final and ultimate use of said properties turned out to be one that is not included within our hypothesis.

Although grave and serious doubts may be entertained respecting the constitutionality of a statute as in the present case, it is a cardinal principle, to which we adhere, that the Court should avoid a decision in this respect if it be possible to make a reasonable construction of the statute or if there is any other ground or reason permitting a disposition of the case without deciding the constitutional question. *Commonwealth* v. *Aguayo,* 80 PRR 534, 575.

In the case before us the principle is of obvious application. Under the facts and other circumstances in this case, it is unnecessary to make the logical and inexorable conclusions which refer to and arise from a simple confrontation of the constitutional principles heretofore stated with the significant and conspicuous provisions or omissions of the statute which we have pointed out. Likewise it is unnecessary to consider and decide the other questions of constitutional or procedural nature raised by defendants in the pleading and in the brief filed.

Under these facts and circumstances, we hereby should conclude and do conclude that the proceeding for the condemnation of the properties which are the subject of this action has not been carried out in conformity with pertinent legislation. The vagueness of the statute, of resolutions No. 5 and 6 of the Governing Board of the Administration; the insufficiency of the proof; the absence of any master plan whatsoever, and a Regulation governing the Administration; the actions of the agencies con-

cerned; the lack of a definite public use and the lack of a necessity for the acquisition which is sought, violate due process of law and invalidate the present action.

For the reasons stated in the foregoing Findings of Fact and Conclusions of Law, the Court dismisses the complaint filed by the Commonwealth of Puerto Rico at the request of the Land Administration, withouf special taxation of costs nor attorneys fees as provided by law.

Notify the parties.

DONE in San Juan, Puerto Rico on the 2nd day of July, 1964.

J. J. CALDERON, JR.
Superior Judge

JUDGMENT

For the reasons stated in the Findings of Fact and Conclusions of Law which are incorporated in this judgment this Court hereby dismisses the present action.

The order of this Court of the 5th of December, 1963, is vacated and the Registrar of Property of Bayamon is directed, once this judgment becomes final to proceed to cancel, and cancel, each and every inscription conveying to the Commonwealth of Puerto Rico the title to the properties referred to in said order, in such a manner that said title revert to and be recorded in favor of the defendants herein.

This judgment is rendered without special taxation of costs nor attorneys fees as provided by law.

Register and Notify.

DONE in San Juan, Puerto Rico this 2nd day of July, 1964.

J. M. CALDERON, JR.
Superior Judge

ATTEST:

BELEN BONIT
Clerk

Appendix B

IN THE SUPREME COURT OF PUERTO RICO

No. AP-65-48

THE COMMONWEALTH OF PUERTO RICO,
Plaintiff and Appellant,
v.
JORGE I. ROSSO and his wife
CARMEN DESCARTES,
Defendants and Appellees.

Condemnation Proceedings

Opinion of the Court by Associate Justice Santana Becerra
San Juan, Puerto Rico, this 7th day of December, 1967.

I.

On December 5, 1963 the Commonwealth of Puerto Rico instituted a condemnation proceeding for the use and benefit of the Land Administration, a governmental agency of the Commonwealth created by Act No. 13 of May 16, 1962. The condemnation proceeding, addressed against properties belonging to the defendants-appellees, was instituted, pursuant to the authority conferred by said Act, and the general Eminent Domain Act in force.

It was stated in the complaint, that the executive director of the Land Administration deemed it useful, necessary and convenient in order to carry out the ends and purposes for which the Administration was created, to acquire the properties which were the subject of the same and specifically, for the purpose of devoting them to the preparation and efficient use of new areas for the necessities of the community, creating adequate reserves of land, to help the Commonwealth of Puerto Rico to ac-

complish its public policy, as well as for any other purposes leading to the accomplishment of the purposes of the Act, which created the Land Administration; and that the acquisition of the properties which are the subject of the action is of public necessity and utility and complies with the purposes of the Administration. The absolute dominion of two properties of 137.70 and 118.26 cuerdas, was condemned, as well as the absolute dominion of another of 25.519 cuerdas and of 62.8528 cuerdas formed by the consolidation of four smaller parcels, together with their respective structures and accessions.

Together with the complaint a declaration for the immediate taking and delivery of the property was filed, signed by the Governor of Puerto Rico, in which it was stated that the properties were being acquired by the Commonwealth for the use and benefit of the Land Administration and in order to enable it to accomplish the purposes for which it was created and specifically, for the preparation and efficient use of new areas for the necessities of the community of the metropolitan area of San Juan and in order to develop projects of the Administration in agreement with state or federal agencies, with the municipal government or with private persons and to create adequate reserves of land to aid the Commonwealth to carry out its public policy and for the accomplishment of any programs in pursuit of the purposes of the act of May 16, 1962 which created the Administration. The sum of $1,381,676.00 was deposited in the Court as just and reasonable compensation for the property acquired.

By order of December 5, 1963, pursuant to law, the absolute dominion title became vested in the people of Puerto Rico and the defendants were granted a term of 30 days for delivery of the property. After several hearings, by order of February 24, 1964 the Court stayed the order for the physical delivery of the property until the

condemnation case could be decided on its merits. The situation since that time to the present is that the people of Puerto Rico have held the dominion title to the properties from December 5, 1963, but so far they have not entered into the possession, use and enjoyment of the same.[1]

By judgment of July 2, 1964 the Court dismissed the condemnation complaint and vacated the order of December 5, 1963 vesting title. The Commonwealth filed the present appeal.

II.

The background of the foregoing proceedings was as follows:

On August 29, 1962 the Land Administration submitted to the consideration of the Planning Board, pursuant to the provisions of the Act creating it, a project for the integral development of the metropolitan area of San Juan, and requested the Board to approve said project for the acquisition of lands (Scope of Project) according to a plan which was attached. It stated that in the indicated geographical area the Administration proposed to carry out works of a public character or to carry out other

[1] In connection with the incidents on the physical delivery of the property the Commonwealth stated the following for the record: "Neither the Government's petition nor the Order of this Court vesting title in the State were directed to stop all of the operations of defendants on the lands condemned, and much less to produce the lay-off of any of defendant's employees, to the extent that the State has made a clear and specific offer to pay for any improvements legally made by the defendant before the final delivery of the property." In conformity with the foregoing, the Government requested that the defendants be authorized, "while the Court decides the foregoing motion, [for delivery], to continue operating the businesses that it is presently carrying on in the condemned land"; and that they be authorized "to carry out in the property work that will constitute useful improvements to the same and which do not interfere with the future use of said property by the Land Administration, improvements for which the State will pay a just price." (Hearing of December 24, 1963). By order of same date the Court provided as stated above.

programs germane to the Land Administration Act and, as an integrated project, to make ready new areas for urban development of the Metropolitan Area under conditions that would secure the best balance with respect to the necessities of the future communities of the area, taking into consideration the standards of the Act, especially its Article 7 (t), to secure for such area the best conditions of health, safety, comfort, recreational facilities and other essential services. All of this was projected in such a manner that the project for the development in this zone could be channeled in such manner that the same would favor the use of the lands indicated in the plan in a planned and efficient form. As fundamental grounds for the said petition to the Board, the Land Administration submitted the information and the data contained in their consultation. As they are of fundamental importance in the consideration of the issue, the document and the plan are attached as appendix (a) of this opinion.

The Planning Board approved the scope of the Project submitted by the Administration.[2]

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[2] In its approval, the Board established the following facts:

1. The extraordinary economic growth of the Metropolitan Area of San Juan during the 1950-1960 decade was dramatically reflected in the rhythm of construction of dwellings, which increased from approximately 2,000 units annually at the beginning of the decade to 7,600 in 1960. In 1961 6,400 dwellings were constructed and in 1962, 8,700.

2. From 1950 to 1960 38,000 private dwellings were constructed in the Metropolitan Area, 70% of the total in the Island. In 1960 there were 148,000 dwellings compared to 108,000 in 1950. In addition, the Urban Renewal Corporation constructed during the decade some 7,548 units of public housing and developed 2,370 lots.

3. In addition another 3,000 cuerdas were required in the Metropolitan Area for industrial, commercial projects, highways and other means of communication. Some of these installations already need to be enlarged or they need additional installations, because of lack of capacity.

4. In the past decade the Metropolitan Area of San Juan absorbed all of the populational growth had by Puerto Rico. Of a

In doing so, the Board stated that conscious of its responsibilities under the law and exercising them with a general purpose of guiding the development of Puerto Rico in a coordinated, adequate and economic way, which according to the present and future necessities and human resources, as well as physical and economical, would pro-

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population of 509,000 which it had in 1950 it increased to 648,000 in 1960, despite the fact that during the period emigration was substantial. Anticipating a balanced regional growth, it is concluded that the Metropolitan Area shall propably grow from 648,000 in 1960 to 863,000 in 1970 and to 1,112,000 in 1980.

5. The demographic growth is accompanied by an economic growth and an increase in the family income. It is expected that the number of jobs in the Metropolitan Area will increase from 140,000 in 1950 to 180,000 in 1960, to 254,000 in 1970 and 326,000 in 1980.

6. The increase in jobs will be registered in industries having a high remuneration which utilize specialized labor, principally in professional, technical, and clerical jobs, yielding higher compensation. Of the total increment of employment provided for the next decade, 65% will be in manufacturing industry and 33% in government, activities calling for skilled work.

7. The effect of this growth in employment in the income of the family points toward an increase of 80,000 in the number of families with an income having a purchasing power of $3,000 in the decade of 1960 to 1970. It is estimated that there were 50,000 families in 1960 with income of more than $3,000. In 1970, it is estimated that this number of families with a purchasing power of similar houses could reach 130,000, that is an increase of 80,000. The estimate for 1980 is of 206,000 of these families. Many of these families are young people with more specialized occupations, who will be entering the dwelling house market because they want their own home. The number of homes in the Metropolitan Area headed by men from 20 to 25 years, young men, was 20,800 in 1960. In 1970 it is expected that this number will be 42,000, and for 1980, of 47,000. This implies a growth in the demand for new homes.

8. It is calculated that the number of dwellings occupied in the Metropolitan Area will rise from 140,000 to 201,000 between 1960 and 1970 and to 274,000 for the year 1980.

9. In addition there exists other dwellings which because of mobility or other reasons may be vacant. In 1950 the number of vacant dwellings was 5% of the occupied ones. In 1960 it was 6% and it is estimated that it may rise to 7 or 8%, respectively, for 1970 and 1980. Considering the occupied and vacant dwellings, the number in the Metropolitan Area for 1980 is expected to be 296,000 dwellings. It is indicated that for 1970, 70,000 dwellings more than in 1960.

mote in the best way the health, safety, morale, order, convenience, prosperity, defense, culture, economic stability and the general welfare of the present and future inhabitants, and such efficiency and economy in the process of development, in the distribution of the population, in the use of the lands and of the public improvements as would

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10. Considering the demographic increment and the economic and employment growth, and the rise of the income of the family, it is indicated that in the Metropolitan Area it will be necessary to construct 80,000 private dwellings of the type in the present market, and between 1970 and 1980 some 90,000 additional ones will be required. In the 3 years from 1960 to 1962 22,700 dwellings were constructed, of which 8,700 were constructed in the last year.

11. The study of the subdivisions constructed in the Metropolitan Area in the preceding decade reflects an average density of 6 dwellings per cuerda. Considering guides adopted by the Board, it is estimated that the average density will arise to 8 dwellings per cuerda. Consequently, the 170,000 dwellings which are required to be constructed for 1980 will need some 20,700 cuerdas.

12. To attain the object of public housing for 1970—families residing in the areas to be improved—it will be necessary to construct around 16,000 units of public housing and develop some 12,000 lots. An equal number will be necessary between 1970 and 1980. This total of housing units and lots will require 4,000 cuerdas.

13. For 1970 a level of 44,000 jobs in manufacturing are estimated, which implies an increase of 17,000 jobs. Between 1970 and 1980 an equal increase of 17,000 jobs is expected. The total of this increase will require around 850 cuerdas.

14. In order to take care of the increased demand for public services and utilities produced by the populational and economic growth anticipated, it will be necessary to dispose of another 3,170 cuerdas to construct highways, hotels, business establishments, parks, hospitals, government offices and other services.

15. As a result of all the foregoing it is calculated that in the Metropolitan Area up to 1980 some 28,720 cuerdas will be needed. Of this amount it is estimated that 3,000 cuerdas were developed between 1960 and 1962. This remaining area of 25,720 cuerdas constitutes the vacant land capable of urbanization in the Metropolitan Area included in the Scope of the Project submitted by the Land Administration.

16. During the decade 1950 to 1960 10,000 cuerdas were urbanized which corresponded in their majority to private dwellings and public projects. The foregoing facts point to an average of 14,000 cuerdas to be urbanized in each of the decades from 1960 and 1970 and 1970 to 1980.

tend to create conditions favorable to such ends, it considered the "implementation" of a program of development for the Metropolitan Area of San Juan indispensable. The program is to be based on the demand for lands which the stated population and economic growth heretofore mentioned will require in the Metropolitan Area of San Juan, which will permit the Planning Board to channel the growth of said area securing a development that is compact and contiguous to the areas already constructed, adequately provided with community facilities and services. Thus, the Board concurred with the Administration and proceeded to approve the Scope of the Project of development submitted to it by the latter, according to the plan attached to Appendix A. In consequence, the Board authorized the Land Administration to acquire by purchase, condemnation or in any other manner the vacant lands capable of subdivision comprised within the Scope of the Project for urban development, for making ready the necessary lands for a normal and compact development of this area.

The approval took place on January 23, 1963. The Board made the following provision: "The right to use any of the properties included within the scope of this project in conformity with the uses authorized by the regulations and orders of this Board, shall remain unaltered until the action for the taking in any legal form of said property in particular shall have been formally instituted."

On January 24, 1963 the Governing Board of the Land

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17. As of October 1962 around 39,350 cuerdas were in use in the Metropolitan Area. This includes 3,900 cuerdas of private residential projects in the process of construction or with approved plans or preliminary development.*

* NOTE: The data and estimates stated in the foregoing 17 paragraphs refer only and exclusively to the Metropolitan Area of San Juan. This includes the municipalities of San Juan, Bayamon, Catano, Guaynabo, Trujillo Alto and Carolina.

Administration presided by the Governor, approved Resolution No. 5.[3] In it the Scope of the Project for development approved by the Planning Board (plan, Appendix A), was accepted. It declared that the property described in the Scope of Project was useful, necessary and convenient to carry out the ends of the Administration and to accomplish the purposes of the Act; it authorized the acquisition by purchase, condemnation or in any other form, under terms and conditions satisfactory to the Administration, of said property; and it authorized the Executive Director of the Administration to sign and execute any document that might be necessary to acquire by purchase, condemnation or in any other manner, these properties within the Scope of the Project.

In a previous meeting held July 10, 1962 the Governing Board adopted the following standard: That it would not acquire lands having a preliminary development in good faith, approved or under consideration of the Planning Board as of the date in which the bill which later became the Act creating the Land Administration was filed. That good faith could be shown by acts which evidenced an intention to carry out immediately or in the immediate specific future the approved development. Prima facie any scheme of development filed in the Planning Board after approval of the Administration Act would not be considered to be in good faith.

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[3] Act 13 provided that the government and the powers of the Administration and its general policy, shall be exercised by the Governing Board presided by the Governor; the Chairman of the Planning Board as its Vice-Chairman, and the Secretaries of Finance, Public Works and Agriculture; the Director of the Urban Renewal and Housing Corporation, the Administrator of Economic Development and two citizens designated with the advice and consent of the Senate. It can be observed that in the composition of the Board there were united the judgments of the different agencies and government entities who were called upon to make the findings respecting the purposes of the Law.

Subject to the preceding standard, the meeting of the Governing Board on January 24, 1963 authorized the acquisition of innumerable properties belonging to different owners, among them those of defendant Rosso, which are here in controversy.[4] Mr. Garcia Santiago, Chairman of the Planning Board, stated for the record that there was no subdivision project respecting the properties of Mr. Rosso pending the aforesaid Board. Neither was there any proposal whatsoever.

From February 1961 the Planning Board suspended approval in general of subdivision projects in the Metropolitan Area of San Juan until new guides could be adopted. The guides were proclaimed by Act 25 of June 8, 1962. When the bill creating the Administration was filed in the Legislative Houses on April 23, 1962, and when the said bill became Act 13 on May 16, said suspension was in force.

At its meeting on May 1, 1963 the Governing Board considered a reconsideration of its resolution requested by Mr. Rosso, which was denied, the original resolution of acquiring the properties being ratified. On this occasion, as at the preceding meeting, Mr. Garcia Santiago stated that defendant's properties should be acquired because they formed part of a contiguous area. They could not be developed independently of the area which surrounds them, and that with their acquisition the area would be integrated so as to accomplish an orderly plan and obtain low cost housing.[5]

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[4] In addition to the 344.3318 cuerdas of Mr. Rosso, at that meeting there was authorized the acquisition of another 585.05 cuerdas owned by other persons. In subsequent meetings the Governing Board authorized the acquisition of properties in the Scope of the Project of development of the city of Arecibo, of the Scope of the Metropolitan zone of Mayaguez and of the Metropolitan Area of Ponce, and additional properties in the San Juan area.

[5] The above conclusions are explained in the answer to the interrogatories submitted by the defendants-appellees (Exh. B for defendant). The orderly and integrated and economic development of an

A further basis for the foregoing condemnation proceedings was the following set of additional facts:

> On May 16, 1962 the Legislative Assembly approved Act Number 13 which gave life to the Land Administration of Puerto Rico as a political body and government instrumentality. The reasons for this legislation are expressed in a full statement of motives wherein the Legislative Assembly declares the existence of the following facts:
>
> (1) That the Commonwealth of Puerto Rico is one of the most densely populated areas in the world.
>
> (2) That urban lands or lands with potentialities for urban development are monopolized and kept without use by their owners.
>
> (3) That this creates an artificial shortage of land and raises the price of lands at a greater rhythm than that of the price of other properties and staple commodities.
>
> (4) That the rapid rise in the price of land makes it impossible for persons of scarce or average means to purchase land in adequate areas and it compels these persons to construct their homes away from the immediate areas of the populations and far from their places of work and the places where they carry out their other activities.

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area of approximately 600 cuerdas of which those of defendant appellee are only a part, is explained and it is said that defendant's properties and the others condemned constitute a vacant area (pocket) between the constructed areas of Guaynabo and Bayamon, it being socially necessary and urgent that said area be developed in a balanced form taking into account the necessities of the community independently of the factors of costs and profits.

(5) That the raise in prices of lands creates undesirable urban expansions, which in turn, creates serious financial problems to the Commonwealth and the municipal governments because the costs of providing public services such as highways, water, sewer, public parks, public health, prevention and extinguishing of fires, police protection and other activities for the protection of life and property, essential for the development of the community, increase several times.

(6) That the raise in the prices of land increases the overhead cost of industrial and commercial establishments and, in consequence, their products are at a disadvantage in the competitive market, both local and outside of Puerto Rico.

(7) That the relatively rapid raise inthe price of the lands increases inequalities in income because the unused lands in Puerto Rico, both urban and rural, are controlled to a great extent by a small number of persons.

(8) That the raise in the price of land affects furthermore, or prevents, the "implementation" of the master plans, is an element of worry for the public conglomerate and constitutes a grave problem.

(9) That in the public interest the excessive and disproportionate increase in the market price of the land should be avoided as soon as possible.

Having declared the existence of said evils, the Legislative Assembly stated:

(a) That the ever increasing price of land cannot be controlled, nor can the problems created by it

be solved, by the present instruments of the governments of the Commonwealth and the municipalities.

(b) That the levying of taxes, and the regulations covering physical planning, are insufficient.

(c) That the regulation in connection with subdivision and zoning operates prospectively for undeveloped areas and are incapable of eliminating non-conforming legal uses of lands.

(d) That the regulation respecting the subdivision of lands is not sufficient: (i) neither to control the expansion of the limits of cities nor (ii) to control unarticulated and inadequate expansions of cities.

Confronted with the inefficacy of the means and manners now at hand to curb the evils announced, the Legislative Assembly declared:

(a) That in order to control the grave problem of the raise in the prices of land the greatest utilization of public funds may be made, authorizing whenever necessary, the obtaining of private property.

(b) That the legislature finds that the provisions of Act Number 13 of May 16, 1962, which created the Land Administration, be adopted as a necessity of public policy.

(c) That the reserve of lands authorized by the provisions of said Act is of itself a public purpose.

(d) That it is the intention of the Legislative Assembly that the activities of the Land Administration created by the said Act: (i) promote in a planned and efficient way the welfare, the economic liberty and the social justice of the present and future inhabitants of Puerto Rico, through the efficient use of the lands and the preparation of new areas in any part of Puerto Rico, in order to secure a better balance

between the necessities of future communities in harmony with the economic and geographical situations; (ii) preserve the historical values and the natural values of the land; (iii) insure the best conditions of health, safety and social life; larger recreational facilities, greater and better essential services; (iv) avoid the concentration of lands for speculative purposes, in the hands of any one person; (v) develop programs for the acquisition of the necessary lands and to channel all types of projects, by itself or together with other governmental agencies, of the United States or with private entities; (vi) promote action leading to a better utilization and exploitation of the lands on the basis of more reasonable costs to the benefit of the welfare of the community, particularly in the zones of potential development; (vii) establish adequate land reserves to aid the Commonwealth in the execution of its public policy of industrial, commercial and housing development, to provide public services so that there may be an orderly development in harmony with the master plans and to help it to perform more effectively its governmental responsibility of maintaining the health, safety and the welfare of the inhabitants.

(e) That it is the intention of the Legislative Assembly that the Administration exercise all the powers necessary (i) to carry out its activities; (ii) to acquire any property, right or servitude which favors the development, exploitation and preservation of open areas in their natural state, protect the bodies of water, preserve the soils and forests, preserve the beauty of the places devoted to public use; to protect from the effects of floods and facilitate the use and development of areas reserved for projects of public interest; (iii) to dispose of its immovable property

subject to the conditions, with the limitations respecting its use and exploitation that may be necessary and convenient, preventing that the use given to said property may tend to create or maintain undesirable conditions or conditions adverse to the public interest; (iv) to establish, when it sells or in any other way disposes of its property, restrictions limiting the profits to be gained by the acquirer from the price to be paid by the public respecting said land; (v) to develop projects for the rehabilitation of lands, through drying, drainage, filling, irrigation or through any other adequate method to increase the utilization of lands.[6]

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[6] The Governor of Puerto Rico sent to the Legislative Assembly on April 23, 1962 a bill which later became Act No. 13 accompanied by his special Message, in which he suggested, given the nature of the proposed legislation, that might produce undesirable speculations, a rapid legislative action to take place in the shortest possible period compatible with the democratic and full discussion of said bill.

The Governor stated that the inflation in the price of lands in San Juan and in other urban zones and parts of the country, constituted a grave problem for families of low or moderate income, for industrialization and for the development of the public works and the orderly growth of cities and towns. That this condition is contrary to the best public interest because:

(1) The execution of housing projects for families of low or moderate income is made difficult.

(2) The entire program of public works is made expensive, which is paid by all of these taxpayers.

(3) The construction of factories for the industrialization program is made expensive.

(4) Cities in their growth are thrown out of orbit when they find they are obliged to grow "in rabbit jumps" as the lands of relatively low prices become available at a considerable distance from the constructed areas. This in turn aggravates the problem of transportation and that of the rendering of efficient and economic public services to the new neighbors, and in general problems are created which as a whole are of great magnitude, complexity and gravity.

The Governor recommended that legislation be approved:

(a) To curb the reckless raise in land price.

Thus in conformity with the broad declaration of intention and legislative purposes, the Legislative Assembly conferred powers upon the Administration.—Arts. 7, 8, 16 of Act. 13—. Among them the full power to execute the public policy of the Commonwealth as declared in the statute.

The power of condemnation having been conferred by the Commonwealth upon the Administration by delegation, the Legislative Assembly itself declared that all property necessary for complying with the purposes of the Act, and all works or projects of the Administration were a *public utility*. —Art. 13—.

It was an express mandate of the Legislative Assembly to the Administration, among other expressed directives, that whenever the Administration sold or in any other

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(b) To eliminate the practices of speculation in lands which only benefit a few to the prejudice of the totality of the growing population.

(c) To assure the development of housing at low and moderate costs for families which do not yet have their own homes.

(d) To insure a reasonable cost for the lands necessary for industrial and commercial purposes which are considered indispensable for the life and progress of Puerto Rico.

(e) To insure the creation of an inventory of land for all public works that may be realized in the course of, at least, the next ten years.

(f) To insure that the growth of our cities respond to the greatest general good.

A fuller understanding of the problem which preoccupied the Government and its gravity is complemented with the facts, data, statistics, socio-economic attitudes, profiteering tendencies, etc. revealed in the full and moving legislative debates on the Bill that became Act 13. See the *Journal of Sessions*, Vol. 15, Book 3, pages 1012 et seq. (Senate, May 3, 1962); pages 1042 et seq. (House, May 3, 1962). See the Joint Report on the Bill submitted by the Finance and Public Works and Lands Committees of the Senate and of the House. *Journal*, id. pages 1007-1012; 1047-1052.

Luis F. Negron Garcia, "*Impact of the Raise in the Cost of Lands in Puerto Rico: The Administration of Land as an Instrument of Urbanism*". Law Review of the University of Puerto Rico, Vol. XXXII, Number 4, (1963).

manner disposed of its property in order that the grantee should develop the same in subdivisions or any other type of project implying a subsequent sale to private persons, it shall include a restriction limiting the profits with respect to the land and all other costs of the project, to be obtained by the grantee. —Art. 7 (z)—.

The Legislative Assembly expressly permitted the Administration to dispose of its property or of any right or interest in the same for a lower price than that which it had paid for it, [at a loss], if by doing this the purposes established in the Act would be accomplished.

Unquestionably, Act 13 possesses all of the characteristics of emergency legislation, —Cfr. Art. 7 (c) (e) (o); Arts. 9, 11, 14, (g), 18— its provisions being commensurate with the gravity of the problem to be attacked, for the execution of which the Legislative Assembly immediately appropriated huge sums of public funds. A harsh remedy for harsh evils.

III.

It is against the fact of the real existence of everything hereinabove stated, that we should focus the issue at bar and pass legal judgment on the decision of the Trial Court.

In the Trial Court the defendants-appellees made a frontal attack on the constitutionality of Act 13.[7]

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[7] Among other challenges they alleged:

(a) That Act 13 is unconstitutional and void as constituting an unlawful delegation by the Legislative Power of the power of condemnation and because it does not establish any standard or rule, just and reasonable, for the exercise of said power, in violation of the Constitution of the Commonwealth and that of the United States.

(b) The condemnation by virtue of this Act is not for a public end or purpose. It pursues a purpose of private nature aimed at dispossessing the defendants of their right to property without the existence of any reasons of utility, emergency or public necessity whatsoever. For said reason, Act 13 violates their constitutional rights under the above-mentioned Constitutions.

The Trial Court made many pronouncements with a strong implication that Act Number 13 is unconstitutional.[8] Nevertheless we find its decision or *ratio decidendi* in the following conclusions of law:

(c) Act 13 is unconstitutional and void because it violates the congressional provision that limits the holding of land by corporations to 500 acres, and because it violates the constitutional provision that forbids a corporation to engage in the business of purchase and sale of real estate.

(d) Act 13 is unconstitutional because it violates the right to equal protection of the laws.

(e) Because it authorizes the use of public funds to a private purpose.

(f) Because it deprives defendants of their property without due process of law.

The defendants made other attacks, this time on the procedure itself now within the frame of the provisions of Act 13 and against the authority of the officers to institute the action pursuant to the Act itself.

We hold from this moment that in the light of the record and of the facts, these other attacks are without merit and cannot be sustained. Also without merit are those referring to the unconstitutionality of Act 13, such as delegation of powers without adequate standards, the holding in excess of 500 acres, transactions in real estate, the denial of equal constitutional protection of the law. In the granting of powers and faculties to the Administration to exercise its functions, specifically the power of condemnation, Act 13 is replete with standards and basic directives to be observed. In 1962 the congressional provision respecting 500 acres was not in force in Puerto Rico. Nevertheless, see *People of Puerto Rico* v. *Eastern Sugar Associates*, (CAL.), 156 F. 2d 316, *cert. den.* 329 US 772, and the express provisions of Sec. 14 of Art. VI of the Constitution of the Commonwealth.

Still to be considered and adjudged is the challenge to the constitutionality of Act 13 by reason of the alleged inexistence of a public end or purpose and the alleged appropriation of public funds for private purposes.

[8] Example: the Court stated, and it is contended by the defendants-appellees, that Act13 does not define the public policy of the State, that is, the means which the Legislator adopted in order to confront the problem, and that the preoccupation is caused by "the total absence of a clear and definite definition of the specific public policy of the State in the face of evil, which is attempted to be cured."

The reading of the statute convinces us that the contrary is true.

"The sufficiency of the averment relating to the contemplated use, as well as the public nature thereof, having been attacked, it is the duty of this Court to determine and decide, definitely, whether the purpose stated constitutes or not a public use. This determination requires that the Court consider the particular facts and circumstances present in this case. [Citation]

Under Sec. 9 of Art. VI of the Constitution of the Commonwealth public funds and properties shall only be disposed of for public purposes . . . and in every case by authority of law—was understood by the Lower Court to mean—that "the total absence" of appropriate guidelines in the Law for the disposition by the Administration of its properties and funds "permits a situation which destroys its constitutionality."

We do not believe that such a "total absence" of standards exists. We understand, on the contrary, that the Act contains sufficient directives to the effect that the disposition of its property and funds by the Administration should always lead to a compliance with any of the ends and purposes directed by the Legislative Assembly, and should not respond to others.

The Trial Court declared, and it is so contended by the defendants-appellees, that as no judicial review was provided for the acts of the Administration "except in cases of condemnation such as the present one, the constitutionality of the Act is very tenuous indeed."

Assuming that the proposition of law is correct, sight is lost here of the fact that the Land Administration is an almost totally executive organism and not a quasi-judicial or one having the function of adjudicating controversies in the administrative sphere. It can be sued —Art. 7 (f)—and like any other executive function its acts in the course of its businesses are subject to the ordinary judicial jurisdiction.

The Court concluded that the provisions of Act 13 which authorize the acquisition of lands "for reserve" are permeated with "equal or greater taints of unconstitutionality."

It must be remembered that in view of the nature of the problem or the evil which it wanted to attack and dissolve, the Legislative Assembly declared that the "reserve" of land constituted, *of itself*, a public purpose. Before the problem at hand, it cannot be contended that this was an arbitrary declaration or one without any basis in reason.

Other holdings of the Court were that the "ambiguity" of Art 13 and its lack of standards encourages the Administration to be tempted to acquire properties and to become another speculator in search of a profit, to condemn them "for the only purpose" of making a profit with the increase in the value of the land, as well as to incur in

"The question of public use cannot be approached dogmatically and should be considered in a realistic manner, deciding each case on its own merits. The term 'public use' cannot be defined in contraposition

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other practices outside their mission for want of any restriction on their extraordinary powers in the use and disposition of their property. That "the absence of a judicial or equitable remedy", the lack of standards in the acquisition, use and disposal of its property together with the "possible speculation" in lands to which the Act lends itself, "stamps as unconstitutional" the statute.

With respect to the purposes of the Legislative Assembly, the Act contains sufficient standards. Should the Administration tomorrow pervert its reason for existence, that would be a problem for the Legislature. Speculation by the Trial Court that the purposes of the Law might be subverted, should not be a bar at the present time with respect to the sovereign exercise of the power of condemnation.

The Trial Court concluded that the Scope of the Project and "*the evident intention*" of Art 14, paragraph (f) "of excluding all increment in the evaluation of the lands to be acquired" permits and authorizes the Administration to condemn for that lower price denying just compensation, the statute itself and the Scope of the Project, being contrary to the Constitution as they deprive persons of property without due process of law.

Assuming that Art. 14 (f) provides the aforesaid, the problem is one of just compensation (not involved in this appeal), of the final responsibility of the Judicial Power independently of the Legislature, but would be no bar to the exercise of the sovereign power of condemnation.

The Trial Court considered other matters, such as that no master plan existed; the Planning Board was not justified in rejecting the consultation of the defendants for the development of their lands; nor were the defendants' lands "urbanizable vacant lands."

The Scope of the Project approved by the Planning Board constituted a master plan in itself. The refusal of the Board to approve the consultations or projects of the defendants was not reviewable in these proceedings in which the Board was not a party, nor can the fact that a proprietor is carrying out works or has projects in mind with his property be an obstacle to the exercise of the sovereign power of condemnation, but he has a right to his just compensation. Within the meaning which for purposes of the Act the Legislative Assembly gave to the concept "vacant property", and within the meaning which the Planning Board and the Governing Board of the Administration gave to it, defendants' lands and those of the other owners integrated in project were vacant lands:—an undivided area located between other areas already subdivided.

to the concept of 'private use'. [Citation] The concept 'public use' is not susceptible of a precise definition. [Citation]

"In the interpretation and application of the term, the so-called liberal doctrine prevails in this jurisdiction. The concept 'public use' was adopted in the Constitution of the Commonwealth of Puerto Rico with the meaning impressed upon it by previous judicial decisions. [Citation] Laws of condemnation, as well as the statutes which delegate the legislative power or which interfere with the right of property, nevertheless, should be restrictively construed." [Citation]

We agree—even though with the observation that the interpretation should always be the one which leads to an efficacious compliance with the ends or purposes of the legislature, not necessarily a restrictive interpretation—that the foregoing propositions of law are substantially correct.

The Trial Court continued and it is supported by the defendants-appellees:

"Concomitantly to the problem of public use there arises the question of public utility and necessity in every condemnation. Article 13 of the Act of the Administration declares that all properties which are necessary 'to carry out the purposes of this Act' are of public utility as well as all works or projects carried out by the Administration. This declaration requires an analysis of its legislative precedents.

. . . . . .

"There is a marked difference between the declaration of public utility which appears in the law creating the Administration and the declaration authorized by the General Condemnation Act. The decla-

ration of utility contained in the Act of the Administration deprives the citizen of the rights which favored him in the General Condemnation Act. In effect under the latter the declaration of public utility requires a previous hearing in all cases for the interested parties 'respecting the necessity for a better public service and a better execution of the work to that end' ... * The Legislature could not have had before its consideration, nor has this Court, any indication whatsoever revealing what was the 'public use' to which the Administration intends to devote the properties it seeks to condemn".

. . . . . .

"The 'necessity' that justifies a condemnation is

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* The Condemnation Act of March 12, 1903 provided in its Art. 2 as amended, that private property may be taken or impaired for legal purposes when it shall have been declared to be of public utility by the Governor or the officer or the agency which he may designate. The declaration of public utility shall be made by the Governor or the officer or agency by him designated, after a hearing in every case, of those persons who are interested in being heard with respect to the convenience of said declaration and with respect to the necessity for the better public service and better execution of the purpose of the work.

It is conceivable that the foregoing does not deprive the Legislative Assembly itself, where the sovereign power of condemnation resides in its origin, from making for itself in the statute a declaration of public utility even with more authority than that made by an officer, and without any hearing being necessary. At any event, if the utility should not be public, the declaration may be attacked judicially by the party affected in the condemnation proceeding in the same manner as provided by the General Condemnation Act, or it could be done by the Legislative Assembly itself, as in Act 13. The lack of previous hearing respecting the declaration of public utility is not a constitutional vice which implies a violation of due process of law. *North Laramie Land Co.* v. *Hoffman*, 268 US 276, page 2 4; *Georgia* v. *Chattanooga*, 264 US 472, page 483; *Bragg* v. *Weaver*, 251 US 57, page 58 and cases there cited; *Sears* v. *City of Akron*, 246 US 243, page 251.

According to the evidence, in this case there was also a declaration of public utility with respect to the specific properties of the defendant, made by the Governing Board of the Administration.

that which presently exists or which may exist in the immediate future and its existence is necessary both for the condemnation and the public works contemplated. A future, indefinite, remote, or speculative necessity is not sufficient. [Citation] .....

"Rule 58 of the Rules of Civil Procedure, as already stated, requires a specific averment of the public use.....

"There is no doubt that the averment respecting the public use made in the complaint is ambiguous and vague. Of equal ambiguity and vagueness are resolutions number five and six of the Governing Board of the Administration.... The answers of the Commonwealth to the requests for admission and the interrogatories submitted to it by the defendants are offered in evidence as well as the statements in open Court by counsel for the condemnor, acknowledge that the condemnation is not for a *'specific public use'* but rather *'for the general ends and purposes framed by the act creating the Administration.* [Emphasis supplied] Private property and, as a corollary, the lands to which this litigation refers, cannot be condemned for an unrevealed use. [Citation]

"No public use according to law having been alleged or proved in this case, this Court must decide, and hereby decides, that no public necessity whatsoever justifying the acquisition by the Commonwealth of defendants' property exists.

. . . . . .

"Under these facts and circumstances we hereby should and do conclude that the proceeding for the condemnation of the properties in question has not been carried out in conformity with pertinent legislation. The vagueness of the statute, of resolutions No. 5 and 6 of the Governing Board of the Adminis-

> tration; the insufficiency of the proof; the absence of any master plan whatsoever; and the regulation governing the Administration; the actions of the agencies concerned; the lack of a definite public use and the lack of a necessity for the acquisition which is sought, violate due process of law and invalidate the present action.''*

With these pronouncements the condemnation proceeding was dismissed and the title of property invested in the Commonwealth of Puerto Rico on December 5, 1963 was vacated, ordering its cancellation in the Registry of Property.

We cannot agree with all of these holdings. The approach of the Trial Court, which did not see any public use or interest in this, is to a certain extent out of focus in present times. It responds to yesteryear which was characterized by the limited and restricted function of merely governmental acts and acts of administration of public affairs, of Government, as the only duty of the state to the community and those governed. It also represents the stale individualistic concept of the exclusive right to the use, enjoyment and disposal of property by the owner,

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* Upon organizing itself, at its meeting of July 3, 1962, the Governing Board adopted a Regulation for the functioning of the Administration. The Trial Court rather has in mind a regulation of substantive standards. On June 20, 1966, the Administration filed in the office of the Secretary of State a Regulation which contains standards with respect to the disposal of lands, published in the Bulletin of Puerto Rico, Vol. 5, No. 6, on June 30, 1966. 23 R.&R.P.R. sec. 311f-1 to 311f-103.

The appellees assign great importance to the mentioned lack of a "Regulation" of substantive standards. An examination of the Minutes of the meetings of the Governing Board (Exh. C defendants) shows, in the discussion and consideration of the resolutions adopted, that it was acting in response to the basic standards of the Act, with a view to complying with its purposes, and not its whims.

which no longer prevails, when it is necessary to confront it with the common good.

IV.

In a comprehensive statement presented to us by the Solicitor General concerning the social, economic and technical-professional aspect of urbanism, the universal phenomenon which nowadays perturbs societies, especially those in the process of development, he cites several authorized opinions of noted persons and entities who are acquainted with the problem. From the Report of the Conference of the United Nations for the Application of Science and Technology for the Benefit of the Underdeveloped Areas, Vol. V. *"People and Living"*, 1963, Publications of the United Nations, p. 167, he quotes:

> "The lack of the requisite legal power to promote development and to channel it in desirable directions often handicaps urban planners and officials in free enterprise and mixed economics particularly where it concerns land use and expropriation..... ; Planners and urban land economists agree widely that government ownership of land in developing areas offers the most effective means of control, avoids the undesirable effects of private speculation in land and ultimately secures a source of revenue for financing government services.... Ownership of the land should be firmly retained in public hands ... in the developing countries the Government must acquire the land."

These other citations furnished to us by the Solicitor General show that the approach of Act 13 of 1962 and the means and ways conceived in it are not an innovation or mere invention:

> From John Graham, Jr. *"Housing in Scandinavia"*, The University of North Carolina Press, 1940, pp. 3, 7:

"This problem of land acquisition is widespread today. Our American cities, in their rapid growth, have been more concerned in land transactions with the profits accruing to individuals than with any consideration of community advantages. Speculation in land values and unrestrained exploitation have been responsible for the artificial and excessive land prices. Comparing, the author states that over a period of years Copenhagen, Helsinki, and Stockholm, have been steadily acquiring parcels of land, principally within and around their limits. The purpose behind this land ownership program, as expressed by the Stockholm authorities, is to secure sites for housing purposes and *to influence the price of land* so that unbridled speculation will be prevented. ... It will give the city the opportunity after a long span of years to change the city plan, to obtain centrally located sites for municipal needs, and finally, to permit easy and inexpensive access to those parts of the city which might have developed into slums."

He continues:

"To declare that the social value of land should be recognized is not to indicate that it should be treated as communal property. Rather, it is to recognize that the community has the prior right in determining, both for the present and the future, the proper use of land, whether its use is to be for purposes of housing, manufacturing, commercial, or agricultural use, forestry or public parks. It may thus be said that the proper mission of land is to function as a catalytic agent, assisting capital to develop resources and ministering to individual and community needs, but without in any way losing its identity as land or

relinquishing any part of its inherent value. Therefore, in a social conception of land value, what the individual owns is not the actual land but the privilege of putting that land to its best use as determined by society.

"This concept of the social value of land is a far cry from the idea that land is a commodity lending itself readily to speculation and exploitation for private gain and subject to the capricious fluctuations of capital. Without destroying the idea of private property, Scandinavians emphasize the social value of land in their extensive and farsighted land acquisition policy."

Among the conclusions submitted to us by the Solicitor General of the Conference at Harvard in 1962 on the problem of urbanism, with the participation of prominent persons, are:

Define metropolitan area; define a master plan; define "public purpose" to include any purpose deemed by the appropriate metropolitan authority to be essential for the realization of the master plan; acquire by condemnation, when necessary, land anywhere within the metropolitan area for a public purpose as above defined, permit all owners of real property to use such property only in accordance with the master plan. Such land could then be put to its best possible use in the interest of the whole community without regard to the acquisition cost of any particular parcel.

And from Guy Greer, Walter Gropius and Martin Wagner cite:

107

Civic shortsightedness and lack of group vision in handling urban land is one of the major causes of our failure to originate the new and better town pattern so badly needed. The land has been traded across the counter for real estate offices as though it were a commodity. But land is not a commodity; for, unlike buildings, it cannot be produced nor moved nor replaced. Land is of such a peculiar nature that it should be owned by the communities which will become increasingly the constant element of our society, with a more or less fluctuating population. If the community would gradually redeem land, it could control the entire area necessary for its development. Such a large scale public land policy is indispensable for a sweeping improvement of our old cities, for a change from a suffocating congestion to the spaciousness of a future green city. *"The Problem of Cities and Towns"*, pages 87, 93, 110, 113.

Also the Solicitor General offers us these other criteria from Charles M. Haar, *"Land Planning Law in a Free Society"*, Harvard University Press, 1951, page 127:

"The reason is that public ownership of land has two distinct types of advantage. Ownership by the State is the most direct method of eliminating the conflict between the private interest in putting a given piece of land to the most profitable use for which it can find a market, and the public interest in ensuring the best use of all land irrespective of monetary return. The social costs of speculative subdivision have led some American experts to the conclusion that the only hope of efficient and economic city growth is public ownership of peripheral areas. By buying land in the line of development, munici-

palities have the power to guide the direction of their future growth. It is no longer dependent on the whim of any individual. Moreover, the disparate landowners may have neither the capital nor incentive to develop. And there remains always the problems of the holdout who may block that plan which is most to the community advantage. Herein the citations of the Solicitor General."

The concepts stated above are not peculiar to the Nordic and Anglo-Saxon communities which are today extensively socialized. In the shake-up of social conscience by Leo XIII, although a "natural" right to private property is acknowledged, the social sense of the same is emphasized. *Rerum Novarum,* 1891. Referring to that Eyncyclical of Leo, John XXIII states:

> "As is generally known, in those days an opinion widely prevailed and was commonly put into practice, according to which, in economic matters, everything was to be attributed to inescapable, natural forces. Hence, it was held that no connection existed between economic and moral laws. Wherefore, those engaged in economic activity need look no further than their own gain. Consequently, mutual relations between economic agents could be left to the play of free and unregulated competition. Interest on capital, prices of goods and services, profits and wages, were to be determined purely mechanically by the laws of the marketplace. *Every precaution was to be taken lest the civil authority intervene in any way in economic affairs.* During that era, trade unions, according to circumstances in different countries, were sometimes forbidden, sometimes tolerated, sometimes recognized in private law. [Emphasis supplied]

"Thus, at that time, not only was the proud rule of the stronger regarded as legitimate, so far as economic affairs were concerned, but it also prevailed in concrete relations between men. Accordingly, the order of economic affairs was, in general, radically disturbed."

And later:

"Private property, including that of productive goods, is a natural right possessed by all, which the State may by no means suppress. However, as *there is from nature a social aspect* to private property, he who uses his right in this regard must take into account not merely his own *welfare* but that *of others* as well." [Italics ours] *Mater et Magistra,* 1961.

Referring also to the evaluation of the social doctrine of *Rerum Novarum,* made forty years later by Pius XI —*Quadragesimo Anno,* 1931,— Pope John XXIII observes that Pius XI took this occasion to clarify certain points on which certain doubts had arisen and in order to develop his social christian thoughts according to the new circumstances of the times, and he says:

"For at that time, some were in doubt as to what should be the judgment of Catholics regarding *private property,* the wage system, and more especially, a type of moderate socialism.

"Concerning private property, our predecessor reaffirmed its natural-law character. Furthermore, he set forth clearly and emphasized the social character and function of private ownership." [Emphasis supplied][9]

[9] Of course, historically there has existed a divergence of philosophical opinion with respect to whether the right of individual property is a natural right or a right of God, as understood by the Church,

"Pius XI was not unaware that, in the forty years that had elapsed since the appearance of Leo XIII's Letter, historical conditions had profoundly altered. In fact, unrestricted competition because of its own inherent tendencies, had ended by almost destroying itself. It had caused a great accumulation of wealth and a corresponding concentration of power in the hands of a few who '*are frequently not the owners, but only the trustees and directors of invested funds, who administer them at their good pleasure.*'" [Emphasis by the author]

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or not. Montesquieu and Bentham believe that it is not. The former states:

> "Thus as men have renounced their natural independence to live under political laws, they have also renounced the natural community in order to live subject to civil laws. The first of these laws acquired for them their liberty, the second their property."

Thus, although he admits a first state of common property in its origin, as is observed by Gutierrez Fernandez—he bases property which owes its origin exclusively to civil laws upon the renunciation of that state. And Bentham:

> "In attempting to find out the exact notion of property, we shall see that there is no natural property; that it is solely a work of the laws. The idea of property consists in an expectation established in the possession of the ability to obtain this or that advantage of the thing according to the nature of the case. However: This persuasion, this expectation cannot be anything else but a work of the law. I cannot count on the enjoyment of that which I look upon as mine, except under the promise of the law, that it guarantees it to me. . . . The property and the law were born together and shall die together. Before laws existed, there was no property; remove the laws, and all property ends." Gutierrez Fernandez, *Codigos o Estudios Fundamentales sobre el Derecho Civil Espanol*, 1868, Book II, pages 53, 54.

The provisions of Art. 5 of the Political Code of 1902 also appeared to us to be in harmony with the legalistic concept of the right of property:

> "The *primary and final* right to all of the immovable and movable properties, within the limits of the territory of Puerto Rico, not belonging to the United States, *resides* in the people of said territory." See Arts. 6 and 9, Political Code.

"Therefore, as the Supreme Pontiff noted, '*economic power has been substituted for the free marketplace. Unbridled ambition for domination has replaced desire for gain; the whole economy has become harsh, cruel,* and relentless in frightful measure.' Thus it happened that even public authorities were serving the interests of more wealthy men and that concentrations of wealth, to some extent, achieved power over all peoples." [Emphasis by the author]

As remedies, among others:

". . . the interests of individuals or of societies especially must be harmonized with the requirements of the common good. . . . civil authority should reassume its function and not overlook any of the community's interests."

As motives:

". . .there be established a juridical order, with appropriate *public and private* institutions, inspired by social justice, so that *those who are involved in economic activities are enabled* to carry out their tasks *in conformity with the common good.*" [Emphasis supplied]

. . . . . .

"As is known, by historical investigations, the primitive Nomad peoples did not recognize any individual right to lands. The cultivation of the land was unknown and each group or tribe would establish itself indistinctly in one place or another according to their convenience, inasmuch as the lands were not considered to be subject to appropriation; but when the agricultural period arrived real property was on principle recognized exclusively in favor of the State. It is because of this original right that the State preserves over all of the territory of each countr that which is in law termed eminent domain." [Emphasis by the author] Jose Lopez del Valle, Esquire, "*Origen y Desarrollo del Registro de la Propiedad*": La Toga, Colegio de Abogados, Oct. and Nov. 1967.

"It is certain, however, as our predecessor noted, that the right of private property is from the natural law itself. Nevertheless, it is the will of God the Creator that this right to own property should in no wise obstruct the flow of '*material goods created by God to meet the needs of all men, to all equitably, as justice and charity require.*'" [Italics supplied by author] [10]

And speaking for itself for the era of today, Mater et Magistra, with respect to the concept of the right of private property from nature says:

"...For the right of private property, including that pertaining to goods devoted to productive enterprises, is permanently valid. Indeed, it is rooted in the very

[10] With respect to the intervention by the public power in the economic field, the Encyclical observes that in this field the public powers should be actively present "to increase output of goods and to further social progress for the benefit of all citizens." Its action should be inspired in the principle of its subsidiary mission. The public powers, responsible to the common good, must feel responsible "that they intervene in a wide variety of economic affairs, and that, in a more extensive and organized way than heretofore, they adopt institutions, tasks, means and procedures to this end."

But it recognizes the principle that the presence of the State in the economic field, no matter how expanded and profound it may be, should not be aimed to reducing the sphere of liberty in the initiative of private citizens, but rather that it should aim to guarantee that sphere the greatest possible breadth, "so long as the basic rights of each individual person are preserved inviolate" which implies that the free development of the activities of production is permitted and empowered in the economic system. Where there is a want of personal initiative of private persons there exists stagnation of the economic sectors designed to produce both consumer goods and the service of material necessities, as well as the requirements of the spirit. "Where, on the other hand, appropriate activity of the State is lacking or defective, commonwealths are apt to experience incurable disorders, and there occurs exploitation of the weak by the unscrupulous strong, who flourish, unfortunately, like cockle among the wheat, in all times and places."

nature of things, whereby we learn that individual men are prior to civil society, and hence, that civil society is to be directed toward man as its end."

He thus adopts the observations of Pius XII, 1944, to the effect that when the Church defends the right of private property, it in no way strives to uphold the present state of affairs, nor "accept the patronage of the affluent and wealthy while neglecting the rights of the poor and needy." The institution of private property should "safeguard the rights of the human person and at the same time make its necessary contribution to the establishment of right order in society."

. . . . . .

"It is not enough, then, to assert that man has from nature the right of privately possessing goods as his own, including those of productive character, unless, at the same time, a continuing effort is made *to spread* the use of this right through all ranks of the citizenry." [Italics ours]

[Citing from Pius XII]:

". . . the dignity of the human person necessarily 'requires the right of using external goods in order to live according to the right norm of nature. And to this right corresponds a most serious obligation, which requires that, so far as possible, there be given to all an opportunity of possessing private property.' On the other hand, the nobility inherent in work, besides other requirements, demands 'the conservation and perfection of a social order that makes possible a secure, although modest, property to all classes of people.' "

. . . . . .

Finally:

> "Obviously, what we have said above does not preclude ownership of goods pertaining to production of wealth by States and public agencies, especially '*if these carry with them power too great to be left* in private hands, without injury to the community at large.'" [Italics supplied by author] [11]

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[11] Caston, in telling us that a principle of law favorable to the social sense of property has been framed, comments that the rigidly individualistic character of property in Roman Law has been considerably exaggerated, as according to a note by Stolfi there existed in that law interesting restrictions and prohibitions founded on the *public interest*, and if those which modern civilization has introduced were lacking this is due to the fact that in those times there was no need for the services which new inventions and great industry have created in our days.

Citing from Stolfi, *Diritto civile*, Vol. II, page 221:

> "After the European war the change produced in the conditions of life and spirit of the people has made to appear as *illogical and unjust* the long protection that the law granted the proprietor. Truly, it is repugnant to general sentiment that the proprietor of the land may plant it with flowers *or leave it* capriciously uncultivated, when the nation is in necessity of bread or other indispensable articles of life; that the villagers can be evicted from the land which they have tilled with their sweat, because the lease has expired and they do not want to be subject to the odious pretentions of the proprietors; that the hundreds of thousands of citizens of the populous city should be dependent on a few hundred proprietors, for the satisfaction of one of the most essential necessities of life, *such as the home*, to which are also connected the *freedom of locomotion, of work*, etc. The new and increased necessities of individuals have shown in their profound gravity these formidable problems, which formerly were hardly apparent." [Emphasis supplied]

And from "*Principes d'Economie politique*", Book II, page 414 et seq. Caston cites from Schmoller:

> "Every superior development of the individuality presupposes the guaranteed superior development, of a certain individual sphere of liberty and consequently, of property. But, at the same time, every superior constitution of the State or of society implies a *common property* and *certain rights of the community over individual property*. The periods of great social progress, of growing cohesion of forces, are at the same time the periods

In Spain, the social concept of private property for the common benefit is deep-rooted. Castan, op. cit., page 100, comments that the individualistic concept of private property as an unlimited right over the thing is today entirely discredited. It is deemed to be considered "as a *subjective* right to which a *social function* is linked."

In the fundamental laws of the Spanish State, private property is recognized and protected by the State-Fuero de los Espanoles, art. 30 — but the State assumes the task of multiplying and making available *to all Spaniards* the forms of property *vitally* linked to the human person, the *family home,* the tract of land and the instruments or working tools for daily use — Fuero del Trabajo, decl. 12—. All the forms of property *are subordinated to the Supreme interest of the Nation,* whose *interpreter* is the State, or in other words, "the necessities of the Nation and the common good" — Fuero de los Espanoles, Art. 30—. The fundamental law of the Principles of the Movement of 1958 subscribes to the foregoing guidelines, but *emphasizes the social end* of the right of property, in declaring that it acknowledges "private property in all of its forms, as a right *conditioned* to its social function." Op. cit., page 91.

Don Jose Castan observes that the classic forms of "taxation" or of "condemnation", are no longer sufficient, but rather that the reconciliation of the right of property with the requirements of the common welfare require a determination of what things may be delivered to indi-

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in which *common property is multiplied*, not only that of the State, but also that of the most considerable social entities, *accentuating the subordination* of the individual life *to the collective ends.*" *Derecho Civil Espanol, Comun y Foral*, Book II, Vol. 1, pages 92, 93, 94, 10th Edition, 1964.

And see: "*La Propriedad y sus Problemas Actuales*", 2nd Edition, Reus Publishing Institute, 1963, Dissertation read by Don Jose Castan at the Solemn Opening of the Courts on September 15, 1962.

vidual control, especially in those economic sectors which are vital for humanity; and it requires that the *social element* be compelled to penetrate individual property, not only with respect to the fixing of limits to the extension and exercise of the right of property, but also imposing upon the proprietor those obligations and responsibilities which are demanded by the general interest, a consequence of the fault of the proprietor or of the notion of risk. Among the many concrete solutions in which he molds the present socializing orientation of the right of property, he points out:

> (ii) Favoring the expansion and *resurrection* of the types of *common or collective property* as well as *exploitation by the State* or *by the Municipality* of certain important industries and of the public utilities. . . . .
>
> (iii) Limiting the exercise of the right of property to avoid its being used antieconomically or irrationally. . . . .
>
> (v) Limiting the power to *enjoy* and *dispose of,* and the entire contents of the right of property, with a full development of the rights *of the community and of the State.* . . . .
>
> (vi) Developing the principle and applications of "condemnation", extending them to certain movables, and *broadening the grounds for applying them with respect to immovables,* introducing beside the classical condemnation for works or constructions of public utility, condemnation on the ground of agrarian or other industrial benefits and improvements and in the *social interest.* Op. cit. pages 102-104.[12]

[12] The Spanish State has a comprehensive condemnation act, which is the Act of December 16, 1954. It provides for condemnation for causes of public utility "or of social interest". In addition to the State

In conformity with the Christian social fundamentals of property stated above, our Constitution recognizes as a fundamental right of the human being, the right to enjoy property. Art. II, Sec. 7.

But our Country has not fallen behind in modern thinking respecting the social utility of all property, public and private, which must in the first instance serve the common

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—Art. 2,—the beneficiaries of condemnation on the ground of public utility may be the entities and concessionaires to whom this condition is legally acknowledged and, "*on the ground of social interest*", aside from the ones aforesaid, *any* natural or juridical *person* who meets the requirements fixed by the special law and necessary for these purposes may be beneficiaries thereof.

Art. 10 declares that public utility, with respect to the condemnation of immovables, is understood to be "*implicit*" in all of the "plans for works and services of the State, province and municipality."

According to Art. 71, there is a right of condemnation on the ground of *social interest* in addition to the cases provided by law, "*when with this expressed meaning a law has specifically declared* that a property or a class of properties be used in the positive sense of a determined social function and the proprietor fails to comply with this directive.

Art. 76 permits the condemnation of *movables* or *immovables* of an artistic, historical or archaeological value. (In the case of these artistic, historical properties, the price of the properties is to be fixed by Academicians, one of them in representation of the proprietor. Art. 78).

Art. 82 permits the condemnation of buildings and lands that interfere with the contemplation of historic-artistic monuments, constitute cause of impairment of any kind to them, and all those which may destroy or lessen *the beauty* or safety of the *collection of historic-artistic interests.*

Art. 85 et sequitur permit the condemnation for reasons of urbanism. According to Art. 86, whenever it be necessary to condemn lands that are the principal basis of support of all or of the greater part of the families of a municipality or of a minor local entity, the Council of Ministers shall agree to the *removal of the population.* Art. 97 permits this to be done on the ground of "colonization" and in the case of properties which are capable of improvement.

Whenever the *general interest advises the diffusion of an invention* or its exclusive use by the State, Art. 99 permits a condemnation of the *patent.* The remaining classes of industrial property, are also declared subject to condemnation.

The Law permits the condemnation of temporary occupation, Arts. 108 et seq.

interest and welfare. In many aspects of this social utility, our People have anticipated, or delved more profoundly into, what has happened in other countries. It is sufficient to look at the legislation presently in force in our statutes and codes.

Although it is true that our condemnation Act of 1903 still speaks in terms of condemnation for reasons of "public utility" and enumerates a series of works, sec. 2, — see sec. 3 (a) — it is nonetheless true that in 1946, by Act Number 300 of April 12, the Legislative Assembly

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In agreement with the foregoing, see the Ley de Ayuntamientos of June 24, 1955; the Law respecting Rules for the Soil and for Urban Order, May 12, 1956; Urban Planning, Urban Rules for Control of the Land, Execution of Plans of Urbanism; the Act of July 17, 1945 respecting condemnation for the benefit of *private* charitable institutions of learning. Law of April 27, 1946 on condemnation or rural properties which have a *social interest*:—Colonization; Decree of August 10, 1955 respecting *concentration of parcels;* Decree of June 12, 1953 respecting Trade in historic-artistic objects; Law of October 24, 1939, declaring an industry to be in the national interest in order to stimulate private initiative to establish it; Law of July 15, 1954 respecting the protection of limited rent housing, and the respective regulations and decrees for the execution of these Laws.

See the Judgments of the Supreme Court of Spain of January 3, 1953 (Aranzadi: No. 102); July 4, 1957; October 10, 1957; February 10, 1930 and December 5, 1931 (respecting artistic or historic properties); March 20, 1952 (colonization).

In a Preamble to the Expropriation Law of December 16, 1954, Rodriguez Moro states as follows:

> "Since 1879 it is no exaggeration to state that the political, social, economic and all other kinds of bases, which condition the action of the Government, have suffered displacement of such significance, that all of the institutions of the classical Administrative Law, even without becoming deformed in their technical scheme, have had to be readapted conveniently, for the purpose of being able to work with them as ideal means in the service of a significant and intensive administrative action very different from the actions which were considered ideal in period in which said law arose. With respect to *condemnation*, this becomes a more pressing matter precisely because it means a considerable sacrifice of the private interest, and this sacrifice of private interest is the point which resists *the growing exigencies of the public interest.*

amended for the first time Art, 282 of the Civil Code of 1902 to read as follows:

> "No person shall be deprived of his ownership except it be by a competent authority, and for a justified purpose, public utility or *social benefit,* and upon payment of just compensation which shall be fixed in the manner provided by law."

The amendment inserted the underscored phrase "or social benefit." [13]

It is provided in the Bill of Rights of the Constitution of the Commonwealth of Puerto Rico, Art. II, Sec. 9, that private property shall not be taken or impaired "for public use" except upon payment of just compensation and pursuant to the form provided by law.

If we take into consideration the most advanced contemporaneous criteria respecting the duties and function

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"Within the field of action fixed by the liberal political order for condemnation proceedings, the principle of *social conscience* of the new State has acted. . . . In consecrating *condemnation for the social interest*, the fundamental law has juridically incorporated a concept which, having overcome the *bitter individualism* of the legal system of private property of the liberal economy, finds an *implicit* social function in property. Consequently, *condemnation* now has to be shaped from this new perspective, so as to afford the Administration *effective means* to execute the principles contained in the fundamental statute of rights and duties of the Spaniards." [Emphasis supplied] Nemesio Rodriguez Moro: "Condemnation". Institute of Political Studies, Madrid, 1958.

Also consult: Garcia De Enterria:

"*Los Principios de la Nueva Ley de Expropriacion Forzosa*", Institute of Political Studies, Madrid, 1956; Alberto Almazor and Julio Rafels: "*Expropiacion Forzosa y Urbanismo*", Barcelona, 1959.

[13] Likewise in its new Civil Code of 1942, Venezuela amended the equivalent article 547 to provide that "No person can be obliged to give up his property, nor to permit others to have the use of it, except for public utility '*or social utility*' . . . ."

of the State; the almost universally accepted fact of the social concept of private property, the social legislation adopted by the Legislative Assembly prior to the Constitution; the judicial interpretation of this legislation; the amendment in 1946 of Art. 282 of the Civil Code made by legislators of whom a great number were later members of the Constitutional Convention as delegates, it is necessary to conclude that the phrase "public utility" in the Constitution of the Commonwealth of Puerto Rico also means social utility, social interest, common welfare.

V.

The power of condemnation of the Commonwealth is consubstantial with its existence as a State, and inseparable from its police power. The Constitution of Puerto Rico regulates this power in the sense that it is to be exercised for public utility and as we have concluded, social benefit and interest or utility and for the common welfare, subject to the payment of a just compensation; and in the case of a printing shop, it is furthermore regulated in other aspects. *Kohl et al.* v. *United States,* 91 US 367, 372; *Boom Co.* v. *Patterson,* 98 US 403, 406; *United States* v. *Jones,* 109 US 513, 518; *United States* v. *Carmack,* 329 US 230, 236, 237; *Reter* v. *Davenport, R.I. & N.W. Ry. Co.,* (Iowa), 54 N.W. 2d 863, 867.

When the Legislative Assembly itself, which exercises the power of condemnation of the State either by itself or by delegation, makes the determination of the public utility or public interest, the power of the Court to contradict that determination is little less than imperceptible. For this to occur, as stated by Judge Holmes in *Old Dominion Co.* v. *United States,* 269 US 55, 56, and ratified years later in *U. S. ex rel TVA* v. *Welch,* 327 US 546, 552, the legislative determination must be equivalent to an impossibility or there must be a total inexistence of a rational connection

between the legislative declaration and the object sought.

Once there has been a legislative declaration or a declaration by the delegated entity that there is public utility, within the present meaning of the concept, the Courts cannot intervene with the manner and the means which the legislature or its delegated entities chooses to exercise the power of condemnation, nor with the selection made respecting what properties are to be condemned. *Berman* v. *Parker,* 348 US 233 et seq.; *U. S. ex rel T.V.A.* v. *Welch, supra; United States* v. *Carmack, supra;* page 242, 243; *Adirondack Railway* v. *New York State,* 176 US 335, 349; *Little* v. *Loup River Public Power Dist.* (Neb.), 36 N.W. 2d. 261, 265; *Pearl River Valley Water Supply Dist.* v. *Brown,* (Miss.), 156 So. 2d 572, 578, *cert. denied,* 376 US 970. See: *McCormick* v. *Marrero,* 64 PRR 250, 253; Municipality v. *Planning Board,* 68 PRR 600, 603; *Commonwealth* v. *Fajardo Sugar Co.,* 79 PRR 303 et seq.; Cfr: *Commonwealth* v. *Aguayo,* 80 PRR 534, 575 et seq.; *Commonwealth* v. *Heirs of Gautier,* 81 PRR 565, 575; Cfr: *P. R. Telephone Co.* v. *Tax Court,* 81 PRR 948, 968; *M. Mercado and Sons* v. *Superior Court,* 85 PRR 354, 359; *People of Puerto Rico* v. *Eastern Sugar Associates,* (CA1) 156 F2d. 316, *certiorari denied,* 329 US 772.

Neither the Trial Court, nor counsel for the defendants-appellees find any public utility or purpose because the Administration, in making use of the powers granted it by Act Number 13 of 1962 in order to execute the purposes of the statute, did not point out any specific work; a school, a government building, bridge, highway or public road, a park, etc., to be performed on the properties condemned.

As a ground for dismissing the complaint because "no public necessity whatsoever that would justify the acquisition by the State of the properties of defendants" exists, the Trial Court concluded that the condemnation was not "for a specific purpose of public use" and instead, "for

the general purposes and ends framed within the Act creating the Administration." The inference is inevitable: The Court understood that the general purposes of Act 13 of 1962 and the ends sought by it are not of public utility.

The error was committed because the Court lost sight of the fact that the defendant's lands are not being condemned as part of a mechanism to provide a *situs* or tract for a specific work. For this purpose, Act 13 was unnecessary. The State could condemn by the ordinary legislation.

In this case sight was lost of the fact that the *land itself* is the fountain and the object at the same time of the evil or the social-economic problem that the Legislative Assembly desired to meet through this legislation, and by the creation of the Land Administration.

Even though the rule were in every sense to the contrary, and courts have ample discretion to adjudge and contradict the legislative criteria respecting public utility and necessity, assuming we repeat, that we have such a function, on the facts of record, the judicial criterion could be no other than one of full concurrence with the legislative judgment.

Our judges, like our executive officers and legislators, as well as the most humble of the citizens in the community, also know of the problems of concentration of human beings in a growing city and its needs for public and social services; the problems of traffic and means of communication; of the basic necessity of family dwellings, and of the innumerable problems and adjustments which are characteristic of an economy that is not static.

They also know how unequal economic forces, when one of them is at a plain disadvantage vis-a-vis the power of the other, are unable to establish, by a neutralizing and balancing law, free prices in open competition, and instead profiteering, speculation and monopoly arises, and artificially fixed prices to the profit of the speculator.

They know that by reason of human nature itself, hand

in hand with the christian investment or capital which creates sources of wealth and welfare and gives life, even though with the just right to a profit, there is a less Christian speculating capital with purely selfish purposes and only for its own particular benefit.

The Trial Court was of the opinion, and the defendants-appellees emphasized it in their briefs, that Act 13 and its means and methods are not anything else but a mechanism in the hands of the State to freeze and regulate the price of land. If the freezing or regulation of prices of land produces a rational way to solve the problem under attack, there is nothing unconstitutional in it. Likewise, if an order to remedy the evil the Land Administration has to become a dealer in lands, even if for the purpose of keeping them in reserve to provide for the future, and all of which is for a social benefit, there is nothing unconstitutional in it.

As remarked by Judge William O. Douglas, the State, if it so desires, may adopt a socialist economy; even though in order to do so, it must pay for the private property it converts to public use. *"The Anatomy of Liberty"*, Credo Series, page 87. And see: *Green* v. *Frazier*, 253 US 233, 238 et seq.

For the reasons stated, we must conclude that:

i. Act No. 13 of May 16, 1962 is constitutional in all of its aspects, means and methods. It constitutes a legitimate use of the public power for the protection of what, for a community of 2,712,808* human beings struggling in a small territory of 3,435 square miles, is their most precious value for survival: living space.

ii. The creation of the Land Administration of

* As of July, 1967. For 1970 2,896,873 are expected; for 1975, 3,217,816 and for 1980, 3,623,895. Facts from the Planning Board.

Puerto Rico and the powers and faculties it exercises to execute the purposes and ends of Act 13 of 1962 are constitutional.

iii. The works, projects, powers, authority and prerogatives of the Land Administration of Puerto Rico created and exercised through execution of the purposes and ends of the Legislative Assembly perpetuated in Act 13 of 1962, are works, projects, powers, authorities and prerogatives invested with a public interest and of social benefit.

iv. The "Scope of the Project" of the Metropolitan Area of San Juan, submitted to the Planning Board by the Land Administration and approved by the Planning Board on January 23, 1963 (Plan, Appendix A) is invested with a public interest and is of social benefit.

v. All acquisition of lands by the Administration with a view to complying with the provisions of Act 13 of 1962 is of public interest and of social benefit, for which condemnation proceedings may be used.

vi. The Commonwealth has the right to retain title of dominion over the properties herein condemned which it acquired on December 5, 1963; and it is entitled to enter immediately into the physical possession of said properties.

vii. The defendants-appellees Messrs. Rosso are entitled to a just constitutional compensation, as said just compensation may be fixed by the Judicial Power. Cfr: *Monongahela Navigation Co.* v. *United States,* 148 US 312, 327; *U. S.* v. *New River Colleries*, 262 US 341, p. 343.

viii. In view of the fact that in the course of this litigation reference has been made to the financial ability of the Administration to satisfy any judgment for just compensation to which the defendant-appellees

may be entitled, it is declared that for the payment of said just compensation as it may be judicially fixed the good faith of the People of Puerto Rico is pledged, and the funds in the Public Treasury are available, independently of appropriations and private funds which the Land Administration may have at the time of fixing the compensation and when the just compensation becomes effective. — Condemnation Act of 1903, secs. 5 (a); 5 (b).

The judgment dismissing the complaint on the merits and vacating the title of property acquired by the Commonwealth on December 5, 1963 is hereby reversed; another judgment will be entered granting the relief demanded in the condemnation complaint, sustaining the dominion title acquired by the plaintiff Commonwealth, and the case will be remanded to the lower court which shall proceed to fix the just compensation defendants are entitled to receive for the condemnation of their properties.

CARLOS SANTANA BECERRA
Associate Justice

OCEANO ATLANTICO
RIO COCAL
CIENEGA DE SAN PEDRO
RESERVACION NAVAL
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SAVAGRE
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BO. FRAILES
QUEBRADA LOS GUANDOS
TRUJILLO ALTO

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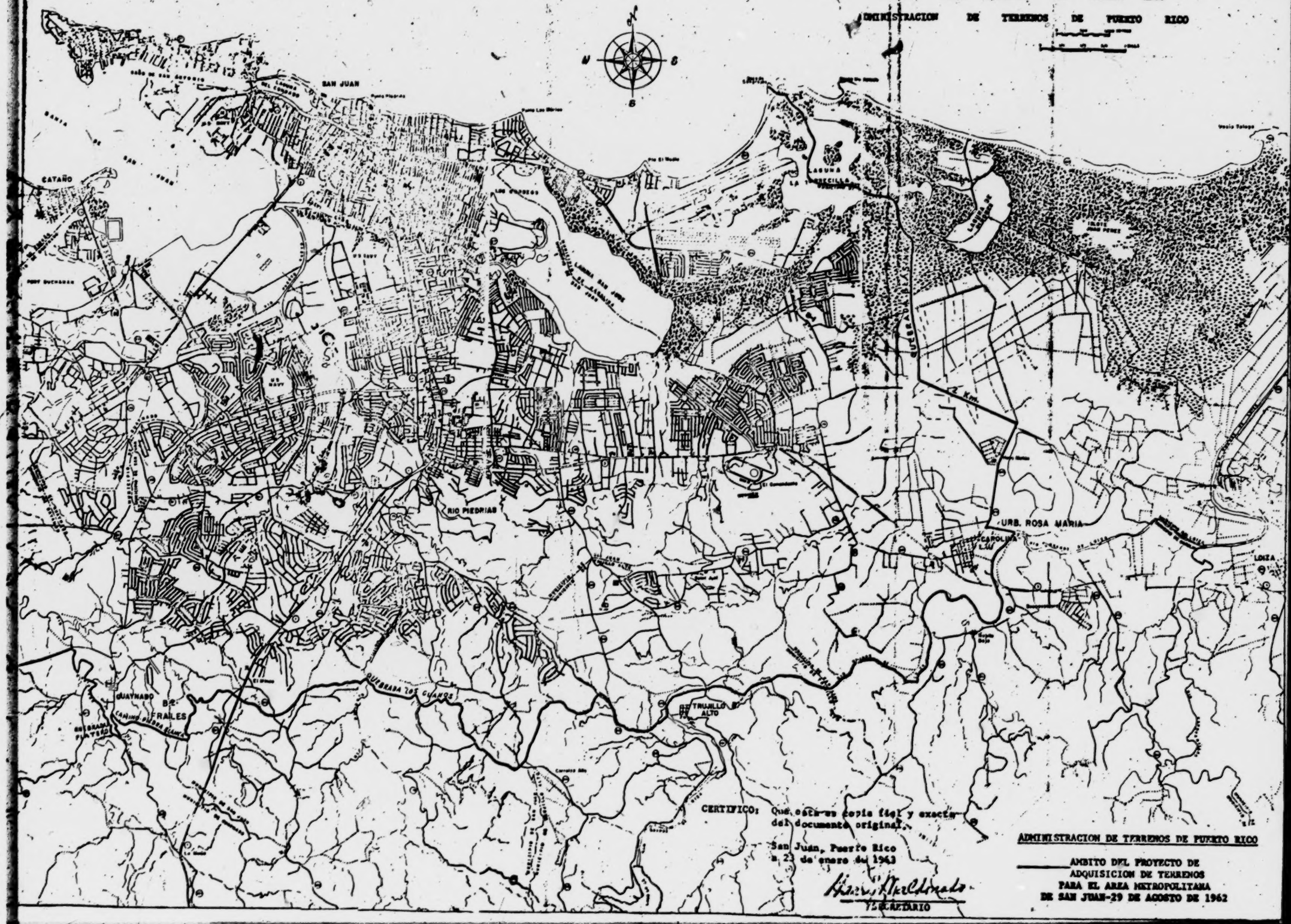
ADMINISTRACION DE TERRENOS DE PUERTO RICO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APPENDIX "A"

August 29, 1962

MR. RAMON GARCIA SANTIAGO
Chairman
Planning Board of Puerto Rico
Santurce, Puerto Rico

My dear Mr. Garcia Santiago:

The Land Administration of Puerto Rico, created by Act Number 13 of May 16, 1962, respectfully submits to the consideration of the Honorable Planning Board the present consultation with respect to its project for the development of the Metropolitan Area of San Juan, in conformity with the powers and duties of this Administration and for the purposes of carrying out the ends of the law creating it.

In the statement of motives of said statute among other things it is stated that:

1. That urban lands or lands with potentialities for urban development are monopolized and kept without use by their owners. That this creates an artificial shortage of land and raises the price of lands at a greater rhythm than that of the prices of other properties and staple commodities.

2. That the rapid raise in the price of land makes it impossible for persons of scarce or average means to construct their homes in adequate areas.

3. That because of the preference of the Puerto Rican family for an individual dwelling, the increase in the price of land compels excessive horizontal expansion of the towns and cities. This renders more difficult and expensive to provide certain essential public services.

4. That the raise in the prices of land increases the overhead cost of industrial and commercial establishments and, in consequence, their products are at a disadvantage in the

competitive market, both local and outside of Puerto Rico.

5. The increase in the price of land precludes the implementation of the master plans and constitutes a serious problem in the adequate use of public funds.

6. That the excessive and disproportionate increase in the price of land should be avoided as soon as possible in the interest of the public.

7. That the disproportionate increase in the cost of land has rendered more expensive and more difficult two types of public works which are essential to the development and welfare of the residents of Puerto Rico: communication and public housing.

The Act furthermore declares, that it is the intention of the Legislative Assembly that the Administration promote, in the planned and efficient form the welfare, the economic liberty and the social justice of the present and future inhabitants of Puerto Rico, by the acquisition, preparation and effective use of new areas in any part of Puerto Rico. In this manner a better balance with respect to the necessities of future communities may be assured, in harmony with the economic and geographic situation; the historic values and the natural values of land, seashores, forests and landscapes will be preserved, better conditions of health, safety and community, greater recreational facilities and greater and better essential services will be assured; the concentration of lands, for speculative purposes in the hands of any person will be prevented; and every type of project will be analyzed, by the Administration, together with state or federal agencies, municipal government or private entities.

To summarize, this would promote actions aimed at better use and exploitation of lands on the basis of more reasonable cost for the benefit of the welfare of the community, especially in towns and in the areas of potential urban development, creating adequate reserves of land

to aid in this form the Commonwealth of Puerto Rico to carry out its public policy of industrial, commercial and home owner policies, to provide public services, so that there will be an orderly development in harmony with the regulatory plans, and to execute more effectively its responsibility of maintaining health, the safety and the welfare of the inhabitants of Puerto Rico at the highest level compatible with the resources of the community.

In the same way, the law confers upon it powers and rights which may be necessary to enable this Administration to execute without exclusion of other inherent activities the following:

1. To acquire any right, interest or servitude in any property which is favorable to the development, exploitation and preservation of open areas in a natural state, to protect bodies of water, to preserve soils and forests, preserve the beauty of landscapes destined to the public use, to protect the public from the effect of floods, and to facilitate the use and development of preserved areas for projects of public interest and especially those relating to the health, safety and welfare of the inhabitants.

2. To dispose of that part of its immovable property that may be necessary, establishing in so doing, such conditions or limitations, with respect to its use and exploitation, that it may consider necessary and convenient.

3. To assure the performance of the purposes of this Law and to avoid that the ultimate use given to said property facilitate or tend to create or maintain conditions which are undesirable or adverse to the public interest.

4. The Land Administration may impose those restrictions, when it sells or in any other manner disposes of its property, which restrict the profits which, by way of price to be paid by the public will be earned by the acquirer respecting the land and all other costs of the project.

5. To develop projects for the rehabilitation of lands by drying, drainage, fill, irrigation or any other adequate methods of increasing the utilization of lands.

This Land Administration has carried out a study of the population factors, the economic factors and of the use of lands in the Metropolitan Area of San Juan. On the basis of the same it has prepared a projection of the probable growth up to the year 1980 with the purpose of determining the necessity of lands to favor the anticipated growth.

Below we offer the basic data of said study:

In the past decade the Metropolitan Area of San Juan (including the municipalities of San Juan, Bayamon, Catano, Guaynabo, Trujillo Alto and Carolina) absorbed all of the populational growth of Puerto Rico. This is to say, that a population of 509,000 which existed in 1950 has increased to 648,000 in 1960. This populational growth was reached in a decade in which migration from Puerto Rico to other places was substantial. The entities concerned anticipate that migration from Puerto Rico will be significantly smaller. Estimated to this effect, taking into account the reduction in the migration of Puerto Rico and the present tendencies of growth of the Metropolitan Area, point to a considerable growth for this area. Anticipating the possible results of a balanced regional growth we reach the conclusion that the Metropolitan Area of San Juan probably will grow from 648,000 in 1960 to 863,000 in 1970 and 1,112,000 in 1980.

Although the demographic growth is one of the principal controlling factors of the demand for housing, it is necessary also to consider the economic growth as the family that desires to possess a new house should have the capacity to acquire it. This populational growth will be accompanied by a rapid increase in the income of families. In the Metropolitan Area of San Juan it is expected

that the number of jobs will increase from 180,000 in 1960 to 254,000 in 1970 and 326,000 in 1980.

The significance of this growth in number of jobs is not so much in its quantitative aspects but rather because of the fact that the increase in these jobs will be registered in industries which are normally high wage industries and which use specialized labor. This means that the increase in jobs will be principally registered in occupations such as the professions, technical, office jobs, salesmen, etc. which are of the highest class and which also enjoy the greatest compensation. Of the total increase in jobs foreseen for the next decade, 65% will take place in the manufacturing industry and 33% in the government, these being activities which use a great proportion of totally qualified employees.

Estimates to the effect on the implication of this growth in jobs and in the increase in income of families show that the growth in the number of families with income with an acquisitive power of $3,000 will be not less than 80,000 in the 1960 to 1970 decade. Concretely, it is estimated that in the Metropolitan Area of San Juan there were in 1960 some 50,000 families with income of more than $3,000 and it is estimated that the number of these families with a power of acquisition to purchase similar houses could be 130,000 in 1970, which represents an increase of 80,000. For 1980 the number of these families is estimated to be 206,000. Many of these families which are passing this level of income are young families, of the more specialized occupations, who will be entering the home market every year when they desire to form their own homes. It is significant that in the Metropolitan Area of San Juan, the number of homes headed by men in the 20 to 25 year range, that is to say, by young people, was 20,800 in 1960. For 1970 it is expected that this number be already 42,000 and for 1980, 47,000. This implies a notable growth in the

number of young couples who shall require new homes.

It is estimated that, purely by reason of populational factors and the formation of homes, the number of dwellings occupied in the Metropolitan Area of San Juan will rise to 140,000 to 201,000 between 1960 and 1970 and by 1980 there will be 274,000.

The foregoing figures refer to occupied dwellings, but at all times there exist other additional dwellings which because of the mobility of families and other reasons may be unoccupied. As a question of reality, in 1950 the number of vacant dwellings was equivalent to 5% of the occupied dwellings. In 1960 the unoccupied dwellings were equivalent to 6% of the occupied ones and it is estimated that for 1970 and 1980, this percent of unoccupied dwellings may rise to 7 and 8% respectively. Taking into consideration both the occupied and unoccupied dwellings, it is anticipated that the total volume of dwellings in the Metropolitan Area of San Juan will be 216,000 in 1970 and 252,000 in 1975.

The estimates indicate that some 70,000 houses more for 1970 than in 1960 and for 1980 some 80,000 more than in 1970. Nevertheless these figures do not represent the total construction that will be carried out in fact during the decade. The number of dwellings to be constructed should satisfy the actual demand which may be generated not only by the increase in the number of families but also by the increase in the number of those who will have the capacity financially to buy them as well as by reason of the demolition, and conversions of the dwellings already existing.

Studies to this effect taking into consideration the growth of the number of families, the increase in income in those families, the diminishment of dwellings by elimination and conversion show that in the Metropolitan Area of San Juan it would be necessary to construct 80,000 private houses

of the type that are sold in the present market and that between 1970 and 1980 some 90,000 additional ones will be required. It is significant that during the three years of 1960 to 1962 a total of 22,700 private dwellings were constructed, of which almost 8,700 were constructed last year.

Below is an explanation of how the populational and economic projections are reflected in the need for lands:

1. *Private Dwellings* — An analysis carried out of the subdivisions constructed in the Metropolitan Area of San Juan during the preceding decade demonstrates that the average density was a little more than 6 dwellings per cuerda. Taking into consideration the guidelines adopted by the Planning Board, it has been estimated that this average density amounts to about 8 dwellings per cuerda. Therefore, the 170,000 dwellings which have to be constructed for 1980 will require some 20,700 cuerdas.

2. *Public housing* — In order to accomplish the objective which has been established for public housing of reducing to 14% in 1970 the number of families residing in the areas to be improved in Metropolitan San Juan it will be necessary to construct some 16,600 public housing units and to develop some 12,000 lots. At least an equal number of dwellings will be necessary for 1970 and 1980. This total of 57,300 housing units and lots will require some 4,000 cuerdas.

3. *Industrial use* — For 1970 it is estimated that there will be a level of 44,000 jobs in manufacturing in the Metropolitan Area of San Juan, which assumes an increase of 17,000 jobs. For the decade between 1970 and 1980 it is expected that there will be an increase of another 17,000 jobs. The total of 34,000 jobs will require around 850 cuerdas.

4. *Other uses* — The economic and populational growth anticipated will doubtlessly bring about a greater demand

for more and better public services and utilities and the development of a greater number of projects by private agencies. The principles of good planning indicate that thought should be given to an adequate use and disposition of the lands. In order to answer the requirements of this demand it is required in terms of land that it be necessary to dispose of another 3,170 cuerdas in order to continue without interruption the construction of highways, hotels, business facilities, bathing resorts and parks, hospitals, government offices and other projects of divers nature.

5. *Total necessities* — The analysis made respecting the demand for lands for different uses and facilities of the community up to 1980 shows that, in the Metropolitan Area of San Juan, some 28,720 cuerdas will be necessary for the following public and private activities:

Use	*Cuerdas*
Industry, tourism and commerce	1,030
Educational and institutional	580
Recreational	600
Medical-hospital	200
Transportation and communication	910
Housing	24,700
Government offices	460
Others	240
Total	28,720

Of this total of 28,720 cuerdas it is estimated that around 3,000 cuerdas were developed between 1960 and 1962. In consequence, the number of net cuerdas necessary up to 1980 will be around 25,720. The foregoing facts point out that the extraordinary growth that was undergone in the past decade will prevail.

During the decade 1950 to 1960 a total of 10,000 cuerdas were subdivided in the Metropolitan Area of San Juan, which in their majority were private and public housing and public projects. The foregoing figures show that an average of a little more than 14,000 cuerdas will be urbanized in each one of the decades from 1960 to 1970 and 1970 to 1980.

Based on the facts offered above this Land Administration requests this Honorable Planning Board to approve the described program of integral development of the Metropolitan Area of San Juan and specifically that it approve the Scope of the Project of acquisition of lands according to the plan which is accompanied. The same graphically describes the geographic scope of the project of acquisition of lands in the indicated area, in which the Administration proposes, in a particular sense, to carry out works of public character or to execute other programs germane to the Act creating the Land Administration of Puerto Rico and, as an integral project, to prepare new areas for the urban development of the Metropolitan Area within the conditions that assure the best balance with respect to the needs of the future communities of the area, taking into consideration the standards dictated by our organic statute, especially Article 7 (t) to assure in said area the highest conditions of healthfulness, safety, comfort, recreational facilities and other essential services. All of this is projected in such a manner that it may channelize the projects of development in this zone in such a form that the same favor the use of the lands which are indicated in the plan in the planned and efficient manner.

Cordially,

FELIX MEJIAS
Executive Director

Appendix
JRV/ammg

I CERTIFY that the foregoing consultation is a true and exact copy of the original transmitted to the Planning Board of Puerto Rico.

JOSE C. RAMOS VASQUEZ
Legal Officer

IN THE SUPREME COURT OF PUERTO RICO

THE COMMONWEALTH OF PUERTO RICO,
PLAINTIFF AND APPELLANT,
v.
JORGE I. ROSSO AND HIS WIFE
CARMEN DESCARTES,
DEFENDANTS AND APPELLEES.

APPEAL FROM THE SUPERIOR COURT, SAN JUAN PART
CONDEMNATION PROCEEDINGS

JUDGMENT

For the reasons stated in the preceding Opinion, the judgment entered by the San Juan Part of the Superior Court on the 2nd of July 1964 is reversed, and there is hereby rendered another judgment sustaining the condemnation complaint and declaring that the plaintiffs Commonwealth of Puerto Rico acquired and holds a full dominion title of the properties in litigation from the 5th of December 1963, with the right to enter into the possession, enjoyment and material use of said properties.

The case is remanded to the San Juan Part of the Superior Court for it to proceed to fix the just constitutional compensation to which the defendants-appellees Messrs. Rosso are entitled.

It was thus pronounced and ordered by the Court and it is signed by the Honorable Chief Justice.

Associate Justices Belaval, Hernandez Matos, Blanco Lugo and Davila did not take part.

ATTEST:

JOAQUIN BERRIOS
Clerk

(s) LUIS NEGRON FERNANDEZ
Chief Justice

ORDER

San Juan, Puerto Rico, this 2 of February 1968.

The motion for reconsideration filed by the defendants-appellees on the 22nd of January 1968, is hereby denied.

Thus the order of the Court which is signed by the Honorable Chief Justice. Associates Justices Hernandez Matos, Blanco Lugo and Davila did not take part.

ATTEST:

JOAQUIN BERRIOS
Clerk

LUIS NEGRON FERNANDEZ
Chief Justice

Appendix C

(S. B. 406)

[No. 13]

[*Approved May 16, 1962*]

AN ACT

To create the Puerto Rico Land Administration; to fix its powers and duties; and to appropriate funds for the carrying out of the purposes of this act.

STATEMENT OF MOTIVES

It is hereby declared:

(a) That the Commonwealth of Puerto Rico is one of the most densely populated areas in the world; that urban lands, or lands adapted to urban development, are monopolized and kept unused by their owners, which creates an artificial shortage of land and raises its price at a rate higher than the raise in price of other properties and staple commodities; that the speedy raise in the price of land makes it impossible for persons of moderate or low resources to purchase land in appropriate areas, and forces such persons to build their homes outside of close-to-town areas and far from their places of work and other activities; that the raise in the price of land makes for undesirable urban expansions, which, in turn, creates serious financial problems to the Commonwealth and municipal governments, as the costs of providing public services such as roads, water, sewers, public parks, public health, fire prevention and fire fighting, police vigilance, and others such as are necessary for the protection of life and property, so essential for the development of a community, increase several times; that the raise in the price of land increases the overhead cost of industrial and commercial enterprises and, therefore, sets their products at a disadvantage in commercial competition

locally as well as abroad; that the relatively speedy raise in the price of land increases differences in income, inasmuch as unused land in Puerto Rico, both urban and rural, is controlled, to a large extent, by a small number of persons;

(b) that this ever-increasing price of land cannot be controlled, nor the problems thereby created can be solved, by any of the tools available to the Commonwealth and municipal governments; that the levy of taxes and the regulations of physical planning are insufficient; that the regulation on subdivision and zoning operates prospectively for undeveloped and underdeveloped areas and cannot prevent the undesirable, but legal, use of the land; and that the regulation on land subdivision is insufficient to control either the expansion of city limits or the disconnected and inadequate expansion of the cities;

(c) that the raise in the price of land also affects or prevents the implementing of the master plans and is a cause of worry for the public conglomerate and constitutes a serious problem, to control which available public funds may be put to maximum use, by authorizing the acquisition of private property whenever necessary;

(d) that it is in the public interest to avoid, as soon as possible, the excessive and disproportionate increase in the market price of land.

It is hereby declared, as a matter of legislative determination, the desirability of the approval of the provisions of this act, as a necessary public policy; and, likewise, it is hereby declared that the land reserve authorized in this act constitutes in itself a public end.

It is the intent of the Legislative Assembly that the activities of the Administration hereby created promote, in a planned and efficient manner, the welfare, the economic freedom and the social justice of the present and future inhabitants of Puerto Rico through the efficient utilization of the land and the fitting out of new areas anywhere in

Puerto Rico, to insure a better balance between the needs of future communities and the economic and geographic media; preserve historical values and the natural values of the land, the beaches, the forests, and landscapes; insure the best conditions of health, safety and social life; larger recreational facilities and greater and better essential services; avoid the concentration of landholdings for speculative purposes by any one person; and develop programs for the acquisition of the necessary land for the carrying out of any type of project, by itself, or through or jointly with agencies of the Commonwealth of Puerto Rico or of the Government of the United States, or with private entities; promote action leading to a better utilization of and profiting from the land on the basis of more reasonable costs in behalf of the welfare of the community, especially in the towns and areas adapted to urban development, creating adequate land reserves in order thus to assist the Commonwealth of Puerto Rico in the carrying out of its public policy of industrial, commercial and housing development, and of providing public services so that there may be an orderly development in keeping with the master plans, and of more effectively meeting its governmental responsibility of preserving the health, safety and welfare of the inhabitants of Puerto Rico at the highest level compatible with community resources. Likewise, it is the intent of the Legislative Assembly that the Administration hereby created exercise all necessary powers and rights, in order to carry out all its activities; to acquire any right, interest or easement in any property which favors the development, utilization and conservation of open areas in their natural state, protect water bodies, preserve soils and forests, and the beauty of places devoted to public use, protect the public from the effects of floods, and facilitate the utilization and development of areas which are reserved for projects of public interest, especially those related to the

health, safety and welfare of the inhabitants; to make use of such portion of its real property as may be necessary, establishing, in so doing, such conditions or limitations as it may deem necessary or proper regarding its use and utilization; to insure compliance with the provisions of this act and prevent that the use given to such property may facilitate or tend to create or maintain undesirable or adverse conditions to the public interest; to impose such restrictions, when selling or otherwise disposing of its property, as will limit the profits which, in the price to be paid by the public, is to be made by the acquirer regarding the land; and to evolve land rehabilitation projects: trough drying, draining, filling, irrigating, or any other proper means for increasing land utilization.

Be it enacted by the Legislature of Puerto Rico:

Section 1.—This act may be cited as the "Puerto Rico Land Administration Act".

Section 2.—The following terms, whenever used in this act, shall have the following meanings, except where the context otherwise clearly indicates:

(a) "Administration" means the Puerto Rico Land Administration.

(b) "Board" means the Governing Board of the Administration.

(c) "Bonds" means bonds, notes, or other obligations or evidences of indebtedness.

(d) "Agency" means branch, department, bureau, commission, board, office, dependency, instrumentality, public corporation, political subdivision, or any other government body.

(e) "United States" includes the Federal Government and its agencies, territories, possessions and political subdivisions, and the states of the Union and agencies thereof.

Section 3.—(a) There is hereby created a body corporate and politic which shall constitute a public corporation

or government instrumentality having a juridical personality separate and apart from that of the Commonwealth of Puerto Rico, and shall be known as the Puerto Rico Land Administration.

(b) The powers of the Administration shall be exercised, and its general policy determined, by a Governing Board composed of the Governor of Puerto Rico, who shall be chairman, the Chairman of the Puerto Rico Planning Board, who shall be vice-chairman, the Secretaries of the Treasury, Public Works, and Agriculture, the Director of the Urban Renewal and Housing Corporation, the Economic Development Administrator, and two additional members to be appointed by the Governor, with the advice and consent of the Senate, for a term of four years and until their successors are appointed and qualify.

The members of the Board shall receive no compensation for their services as such.

Section 4.—The Executive Director of the Administration shall be appointed by the Board, shall hold office at the will of the appointing authority and until his successor is appointed and qualifies, and shall discharge such duties and bear such responsibilities as may be assigned to him by the appointing authority, pursuant to the bylaws of the Administration. The bylaws of the Administration may provide for the delegation to the Executive Director of such powers and duties of the Administration as the Board may deem proper.

Section 5.—The Administration shall have a secretary, who shall be appointed by the Board. The Secretary shall hold office at the will of the appointing authority and until his successor is appointed and qualifies.

Section 6.—The debts, obligations, contracts, bonds, notes, debentures, receipts, expenditures, accounts, funds, printed matter and property of the Administration shall be deemed to be those of the said Administration and not

those of the Commonwealth of Puerto Rico or of any agency, official or employee thereof.

Section 7.—Duties and Powers.—The Administration shall have a juridical personality of its own and may exercise such rights and powers as may be necessary or proper for the carrying out of the purposes hereof, including, but not limited to, the following:

(a) To have perpetual succession;

(b) To approve, amend or repeal bylaws;

(c) To appoint all its officials, agents and employees, and to grant and impose on them such powers, faculties, responsibilities, and authority as it may deem proper; to determine their duties; to fix, change and pay such compensation as it may determine, subject to the policy, bylaws, regulations and procedures approved by the Board. All personnel matters of the Administration shall be regulated without subjection to the laws governing the Office of Personnel of the Government of Puerto Rico or to the rules and regulations promulgated by said Office;

(d) To adopt, alter, and use a seal which shall be judicially noticed;

(e) To draft, adopt, amend, and repeal rules and regulations governing the policies of its activities in general, and to exercise and discharge the powers and duties granted to and imposed on it by law. Upon the approval and promulgation of said rules and regulations by the Board, the same shall have the force of law as soon as filed in Spanish and English in the offices of the Secretary of State. Such rules and regulations shall be published in the Bulletin of the Commonwealth of Puerto Rico and shall, not later than ten days after filed in the offices of the Secretary of State, be published in a newspaper of general circulation;

(f) To sue and be sued;

(g) To establish the accounting system required for an adequate control of all expenditures and revenues pertain-

ing to or administered by it, in consultation with the Secretary of the Treasury;

(h) To have full powers for the carrying out of the public policy of the Commonwealth of Puerto Rico as herein established;

(i) To make contracts and to execute all instruments necessary or expedient in the exercise of any or all of its powers;

(j) To acquire property in any lawful manner, including but without limitation, the following: by purchase, option of purchase, purchase by instalments, at public auction, by lease, legacy, devise, assignment, exchange, gift, or by the exercise of the right of eminent domain in the manner provided by this act and the laws of Puerto Rico; and to hold, maintain, use or avail itself of, or utilize any real or personal property, including, but not limited to, securities and other movables or any interest therein, deemed by it necessary or desirable to carry out its purposes;

(k) To sell, grant options of sale, sell by instalments, convey, exchange, lease or otherwise dispose of its property in the course of its normal operations, except by gift, which may only be made for the benefit of the Commonwealth of Puerto Rico and its agencies. There shall not be considered as a gift any disposal of property, or of any right or interest therein, which, in fulfillment of the purposes hereof may be effected by the Administration at a lower price than it paid for same, or lower than the value of such property, or right or interest therein, in the market;

(l) To sell or otherwise dispose of any real or personal property which in the judgment of the Administration is no longer necessary to carry out the purposes of this act, subject to the same limitation imposed thereupon by the preceding paragraph;

(m) To borrow money, give security and issue bonds for any of its corporate purposes or for the purpose of

funding, refunding, paying, or discharging any of its outstanding or assumed bonds or obligations, and to secure payment of its bonds and of any and all other obligations by pledging, mortgaging, or otherwise encumbering all or any of its contracts, revenues, income or property;

(n) To accept in its own behalf, or in behalf of the Commonwealth of Puerto Rico, financial aid of any nature, including subsidies, gifts, advances and suchlike, from the Commonwealth of Puerto Rico or its agencies, from the United States Governments or its agencies, and from private persons; to enter into contracts, leases, agreements, or other transactions with both or any of such governments or their agencies, and to expend the proceeds of the funds so received for the purposes of this act;

(o) To have complete control and supervision of any and all of its property and activities, including the power to determine the character of and necessity for all its expenditures and the manner in which they shall be allowed, incurred, and paid, without regard to the provisions of any laws governing the expenditure of public funds, and such determination shall be final and conclusive upon all officers and employees of the Commonwealth of Puerto Rico, without prejudice to the provisions of section 10 of this act;

(p) To prescribe by regulation the policies governing all matters with relation to the personnel of the Administration. Such policies shall, insofar as compatible with the efficient effectuation of the purposes of the Administration, be similar to those governing the personnel of the commonwealth government;

(q) To acquire, in the manner provided in this act, private property and keep it in reserve, for the benefit of the people of Puerto Rico, for the use of the Commonwealth of Puerto Rico or its agencies. Whenever properties or property rights are condemned for specific purposes of public-work development and social welfare, such purposes

shall be carried out within a period of years which shall never exceed fifteen, from the date of acquisition. The property so acquired may be assigned or conveyed to the Commonwealth of Puerto Rico or its agencies, under reasonable terms and conditions.

(r) To enter, after obtaining permission to do so from the owner or holder, or his representative, any land or premises, for the purpose of making surveys, taking measurements, or conducting investigations with regard to the nature, conditions and price of such lands or premises, for the purposes of this act. Should the owner or holder, or his representative, refuse to grant permission to enter the property for the above mentioned purposes, any judge of the Court of First Instance shall, upon presentation to him of an affidavit setting forth the intention of the Administration to enter such lands or premises for the stated purposes, issue an order authorizing any official or officials, or employees of the Administration to enter the property described in the affidavit, for the purposes mentioned in this provision.

(s) To acquire real property, urban or rural, which may be kept in reserve towards facilitating the continuation of the development of public work and social and economic welfare programs which may be under way or which may be undertaken by the Administration itself, by the Commonwealth of Puerto Rico or its agencies, and by private persons for the benefit of the above-mentioned public entities or of the community, including, but not limited to, housing and industrial development programs, in order to prevent the inflation brought about by speculative practices in the purchase-sale of real estate and to allow for populational growth in an organized and planned manner;

(t) To promote and share in the fitting out of new areas anywhere in Puerto Rico, within the frame of the policies which will insure a better balance with regard to the needs

of future communities, aiming, among other things, to preserve the natural values of the lands, beaches, forests, and landscapes; to insure the best conditions of health, safety, comfort, recreational facilities, essential services, and esthetic activities; to preserve historical values; to insure the utilization of lands on the basis of the most reasonable costs in behalf of the welfare of the community; to this end, but not to be construed as a limitation, to develop programs for the acquisition of the necessary lands, and for encouraging all kinds of projects, such as will favor such development, either on its own or through or jointly with agencies of the Commonwealth of Puerto Rico or of the Government of the United States, or with private entities;

(u) To barter for the purpose of improving the utilization of the lands;

(v) To exercise all necessary powers and rights for developing land rehabilitation projects through drying, draining, filling, irrigating, or any other proper means for increasing land utilization;

(w) To carry out by itself, or through or jointly with agencies of the Commonwealth or of the Government of the United States, or by means of covenants with private persons or entities, programs and works, including housing projects, to insure the most effective development and the fullest utilization, in keeping with the purposes of this act, of lands owned by the Administration, or by the Commonwealth or any of its agencies;

(x) To acquire any right or interest or easement in any property in order to: promote the development, utilization and maintenance of open areas in their natural state so as to protect bodies of water; to protect the public from the effects of floods; to preserve soils and forests; to preserve the beauty of places devoted to public use, including green areas and public parks; and to facilitate the use and development of areas which are in reserve for projects of

public interest, especially those related to the health, safety and welfare of the inhabitants;

(y) To enter into agreements with the Commonwealth and its agencies so as to acquire real property for them; to sell real property owned by them, or intervene in or carry out the development of programs in connection with such property, subject to the laws that fix the official activities of said agencies. To such ends, the parties to these covenants are hereby authorized to make such transfers of funds as may be necessary;

(z) To establish, in disposing of any real property, all such conditions and limitations regarding its use or utilization as it may deem necessary and desirable to insure the fulfillment of the purposes of this act, so that the use made of said property will not facilitate or tend to create undesirable conditions, or conditions adverse to the public interest, which this act aims to protect. Whenever the Administration sells or otherwise disposes of property for the acquirer to erect thereon housing developments or any other type of project involving a subsequent sale to private persons, it may fix such restrictions as it may deem necessary for the effectuation of the purposes of this act. In any event, it shall include one limiting, through a proper formula, the profits to be had by the acquirer with respect to the land and all other costs of the project.

(a-1) To transmit, in perpetuity or for a limited time, to urbanizers, for housing developments, and to other persons for the undertaking of any work having social interest, any right real or personal, or any interest in the lands that it may hold; and

(b-1) To sell, whenever it may deem it necessary and desirable, lands or any interest therein, at such price as it may consider reasonable in order to lower the cost of the houses or to fulfill any of the purposes of this act.

Section 8.—The Administration may, subject to the ap-

plicable regulations of the Planning Board, subdivide the lands acquired by any of the means authorized by law, according to the topography of the land, its fertility, the local conditions, and the desirable policies to achieve the best development or utilization of such lands for the benefit of the Puerto Rican community, and thus to fulfill the purposes of this act. The size and value of such lands shall be determined by the Administration on the basis of the existing needs in the zone, urban or rural, where a program or public work or activity is to be undertaken for the better utilization of such lands. The Administration shall promulgate the necessary regulations to fulfill the purposes of this section.

Section 9.—All funds of the Administration, including the proceeds from the sale of its bonds, shall be deposited with recognized depositories for funds of the Commonwealth of Puerto Rico, but such funds shall be kept in a separate account or accounts registered in the name of the Administration. Disbursements shall be made by the Administration according to its own regulations and budgets.

Section 10.—The Controller of the Commonwealth of Puerto Rico shall, whenever he may deem it necessary, but at least once each year, examine all accounts and books of the Administration, and shall report thereon to the Legislative Assembly, the Governor, and any other public officer, as he may see fit. No provision of this act shall be construed as a limitation to the powers of the Controller of Puerto Rico.

Section 11.—The public corporations of the Commonwealth are hereby authorized to assign and convey to the Administration, at the latter's request and under such reasonable terms and conditions as they may agree upon, without the need for auction or other legal formalities additional to the execution of the proper instrument, any

property or interest therein, including property already devoted to public use, such as the Administration may deem it necessary or desirable to possess for the effectuation of its own purposes.

The Secretary of Public Works may, free of any cost whatsoever, convey to the Administration, with the approval of the Governor, such lands of the Commonwealth of Puerto Rico as said Administration may need for the effectuation of its purposes. This provision shall not be construed in the sense of authorizing the assignment or conveyance of property specifically devoted to other purposes by legislative provision.

Section 12.—On request of the Administration, the Commonwealth of Puerto Rico may acquire, by purchase, condemnation, or by any other lawful means, for the use and benefit of the Administration, in the manner provided for by this act and by the Commonwealth laws on condemnation, the title to any real property and the interests therein that may be necessary or convenient for its purposes. The Administration shall advance the necessary funds estimated as the value of the property or rights to be acquired. Any difference in value which may be decreed by the competent court may be paid from the public treasury, but the Administration shall be under obligation to reimburse said difference. After reimbursement in full is made, the title to said property shall be transferred to the Administration, upon order of the court to that effect. In those cases where the Governor of the Commonwealth of Puerto Rico should deem it necessary and convenient that the title to the property and rights so acquired be directly recorded in behalf of the Administration so as to speed up the fulfillment of the ends and purposes for which the same was created, he may so request from the court at any time within the condemnation proceedings and the court shall so order. The power hereby conferred on the Governor

shall not limit or restrain the authority of the Administration to institute itself the condemnation proceedings when it may deem it convenient.

Section 13.—All real and personal property or interests therein necessary to carry out the purposes of this act, are declared of public utility, also every work or project carried out by the Administration, and said real and personal property or any less estate or interest therein, may be condemned without the previous declaration of public utility provided in the General Laws of Eminent Domain, either by condemnation proceedings instituted by the Commonwealth of Puerto Rico, or directly by the Administration.

Section 14.—(a) In any proceedings which have been or may be instituted by and in the name of the Administration for the acquisition of land for the purposes specified in this act, the Administration may file in the same cause, at the time the petition is filed or at any time before judgment is rendered, a declaration of taking for the acquisition and material delivery of the property the object of condemnation, signed by the person or entity empowered by law to seek the condemnation in question, declaring that said property is sought for the use of the Administration. Said declaration of taking and material delivery shall contain and be accompanied by: (1) a statement of the authority under which, and the public use for which, the acquisition of said property is sought; (2) a description of the property sufficient for the identification thereof; (3) a statement of the estate or interest in said property the acquisition of which is sought for the utilization purposes specified in this act; (4) a plan, in the case of property which can be so represented; (5) the fixing of the sum of money estimated by the Administration to be just compensation for the property the acquisition of which is sought.

(b) As soon as said declaration of taking and delivery is filed and the deposit is made in the court, for the benefit and

use of the natural or artificial person or persons entitled thereto, of the amount estimated as compensation and specified in said declaration, title to the said property in fee simple absolute, or such less estate or interest therein as is specified in said declaration, shall vest in the Administration or in the Commonwealth of Puerto Rico, as the case may be, and such property shall be deemed to be condemned and acquired for the use of the Administration or of the Commonwealth of Puerto Rico. The right to just compensation for the property shall vest in the person or persons entitled thereto; and said compensation shall be ascertained and awarded in said proceeding and established by judgment therein; and the said judgment shall include, as part of the just compensation awarded, interest at the rate of six per centum (6%) per annum on the amount finally awarded as the value of the property as of the date of taking, from said date to the date of payment; interest shall not be allowed on so much thereof as shall have been deposited and paid into the court. No sum so deposited and paid into the court shall be subject to any charge for any reason whatsoever.

(c) Upon application of the parties in interest, the court may order that the money deposited in the court, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in said proceeding. If the compensation finally awarded in respect to said property, or any part thereof, shall exceed the amount of the money so received by any entitled person, the court shall enter judgment against the Administration or the Commonwealth of Puerto Rico, as the case may be, for the amount of the difference.

(d) Upon the filing of the declaration of taking, the court shall have power to fix the time within which, and the terms upon which, the natural or artificial persons in possession of the property the object of the proceeding

shall surrender material possessions to the expropriating party. The court shall have power to make such orders in respect to encumbrances, rentals, taxes, insurance and other charges, if any, burdening the property, as shall be just and equitable. No appeal in any such cause, nor any bond or undertaking given therein, shall operate to prevent or delay the acquisition by, or the vesting of the title to such property in, the Administration or the Commonwealth of Puerto Rico, as the case may be, and its material delivery thereto.

(e) In any case in which the Administration shall have acquired title in fee simple to and possession of any land and the structures located thereon, during the course of a condemnation proceeding, before final judgment is rendered, and in which the Administration is obliged to pay the amount finally awarded as compensation, the Administration shall have power to destroy such structures erected on said land.

(f) In case of condemnation of property for the purposes of this act, the just compensation shall be based on the value in the market of such property, without taking into consideration any increase in such value due to the condemnation project having been announced and publicized.

The valuation to be made shall not include any increase due to well-founded and reasonable expectation that the property to be acquired by the Administration or by the Commonwealth, or other property similar thereto, or situated within the locality where the former is situated may now or later be required for public use or social benefit, or be necessary for some use to which it can be applied only by the Administration or the Commonwealth or any agency or instrumentality thereof with power for the condemnation of private property.

In case of condemnation, the just compensation shall likewise not include any new increase by reason of the

public improvement or expenditures made in the locality by the Administration or the Commonwealth or any agency thereof, nor shall it include any increase by reason of any other work done by or at the initiative thereof, to effectuate the purposes of this act, when the increase be the result of plans or resolutions, officially adopted, for the acquisition of land for public works or for the purposes of this act.

(g) The provisions of Act No. 182, approved May 5, 1949, and of Act No. 441, approved May 14, 1947, as amended, shall not apply in respect to the properties, acquired by the Administration. In case of sale of real property acquired by condemnation and no longer useful for the purposes of this act or for the public purposes of the Commonwealth or any of its agencies, preference shall be given to the former owners of the condemned property, or in default thereof, to their forced heirs, subject to the conditions which the Administration may establish for the sale of said property. In no case, however, shall the Administration be obliged to sell to the former owner or to his heirs at a price lower than the market value of the property in question at the time it is sold by the Administration.

When the Administration shall determine that the acquired property or any part thereof is no longer useful for the purposes of this act or for the public purposes of the Commonwealth or its agencies, it shall notify the person or persons from whom said property was expropriated, or the forced heirs thereof, of their preferent right to require such property. The notification, showing the price and conditions of the sale offer, shall be sent by registered mail, if the addresses of the interested parties are known; if unknown, the notification shall be by edicts, published in a newspaper of general circulation once a week for two consecutive weeks. If the edict is published, it shall be presumed, subject to evidence to the contrary, that the address was unknown.

Upon expiration of the term of thirty (30) days from the notification by mail, or of forty (40) days from the publication of the last edict, which terms shall be unextendable, the Administration shall be at liberty to dispose of the property as best benefits the public interest.

When the person or persons entitled to such preference accept, within the term prescribed by this section, the price and conditions of the sale, said person or persons shall be obliged to send to the Administration the amount of the value of the property, by certified check or in legal tender. If the aforesaid requisites are not complied with, acceptance of the preference shall have no validity whatsoever, and the Administration shall be entitled to dispose of the property as expressed in the preceding paragraph.

Section 15.—The properties belonging to the Administration, and any interest in any property held by it, shall be exempt from the payment of all kinds of fees, taxes (except property taxes), commonwealth or municipal tariff fees or imposts, heretofore or hereafter required by law. This exemption covers the execution of all kinds of instruments, the prosecution of proceedings of any nature, or the issuance of certifications, and recordings in the registries of property.

Section 16.—(a) By authority of the Government of Puerto Rico, hereby granted, the Administration may issue and sell its own bonds from time to time, and have them outstanding;

(b) The Administration, through resolution or resolutions to that effect, shall determine everything related with the date; time of maturity; rate or rates of interest; denomination or denominations; series; form; registration or conversion privileges; medium of payment; place or places of payment; terms of redemption, with or without premium; date they may be declared due, even before their maturity; replacement of mutilated, destroyed, stolen or lost bonds;

and all the other conditions and stipulations which it may consider convenient;

(c) The bonds may be sold at public or private sale for such price or prices not lower than ninety-five (95) per cent of the par value thereof as the Board shall determine; refunding bonds may be exchanged for outstanding bonds of the Administration on such terms as the Board may deem to be in the best interest of the Administration. All bonds of the Administration shall be negotiable instruments;

(d) The bonds of the Administration bearing the signature of the officers of the Administration in office on the date of the signing thereof, shall be valid and binding obligations, notwithstanding that before the delivery thereof and payment therefor any or all of the officers of the Administration whose signatures or facsimile signatures appear thereon have ceased to be such officers of the Administration;

(e) Temporary or interim bonds, receipts or certificates may be issued in such form and with such provisions as may be provided in such resolution or resolutions;

(f) Any resolution or resolutions authorizing bonds may contain provisions which shall be part of the contract with the bondholders: (1) as to the disposition of the entire gross or net revenue and present or future income of the Administration, including the pledging of all or any part thereof to secure payment of the bonds; (2) as to the covenant of pledging all or any part of the revenues, income or property of the Administration; (3) as to the setting aside of reserves for amortization funds and the regulation and disposition thereof; (4) as to limitations on the purposes to which may be applied the proceeds of the sale of any issue of bonds made; (5) as to limitations on the issuance of additional bonds; (6) as to the procedure by which the terms of any resolution authorizing bonds, or any other contract with the bondholders, may be amended or abro-

gated; (7) as to the amount of the bonds whose holders must consent thereto, and the manner in which such consent may be given; (8) as to the events, default, and terms and conditions upon which any or all of the bonds should become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived; and (9) as to any other acts or conditions which may be necessary or convenient for the security of the bonds, or that may tend to make the bonds more marketable;

(g) No officer or employee of the Administration executing bonds shall be liable personally on the bonds;

(h) The Administration is authorized to purchase any outstanding bonds issued or assumed thereby, with any funds available therefor, at a price not exceeding the principal amount or the redemption price thereof plus the accrued interest.

(i) The bonds issued by the Administration shall be lawful investments and may be accepted as securities for all trust funds, special or public, whose investment or deposit is under the authority and jurisdiction of the Commonwealth Government or of any officer or employee thereof.

(j) The bonds and other obligations issued by the Administration shall not be a debt of the Commonwealth of Puerto Rico or of any of its agencies; nor shall such bonds or other obligations be payable out of any funds other than those of the Administration;

(k) The bonds issued by the Administration and the income deriving therefrom shall be exempt from taxes and imposts from the Commonwealth of Puerto Rico and its agencies;

(l) The Commonwealth of Puerto Rico does hereby pledge to, and agree with, any of its agencies, or with any agency of the Government of the United States or of any State of the Union, or with any person subscribing to or acquiring

bonds or other obligations of the Administration, that it will not encumber, limit nor restrict the properties, incomes, revenues, rights or powers hereby vested in the Administration until all such bonds or other obligations at any time issued, together with the interest thereon, are fully met and discharged; and

(m) In addition to the rights which they may have, subject only to the restrictions arising from the contract, the bondholders shall be entitled to compel the Administration, its officers, agents or employees, by mandamus, action or proceeding at law or in equity, to fulfill any and all the terms, agreements or provisions contained in the contract of the Administration with or for the benefit of said bondholders, and to require that there be carried out or performed any of the resolutions and covenants of the Administration or of the duties required by this act. They may likewise, by action or proceeding at law, challenge any illegal act in violation of their rights on the part of the Administration.

Section 17.—The provisions of Act No. 272, approved May 15, 1945, as heretofore or hereafter amended, shall be applicable to the Administration.

Section 18.—Where the provisions of this act are in conflict with the provisions of any other act of the Legislature of Puerto Rico, the provisions of this act shall be controlling and no law hereafter passed shall be construed to apply to the Administration unless so specifically provided.

Section 19.—No injunction shall be issued to prevent the application of this act or any part thereof.

Section 20.—If any provision of this act is declared unconstitutional by any court, said judgment shall not affect the rest of the statute.

Section 21.—There is hereby appropriated to the Administration, from unencumbered funds in the Commonwealth treasury, up to the sum of twenty million (20,000,000)

ollars to carry out the purposes of this act. From this
um there is hereby appropriated and placed at the disposal
f the Administration, effective July 1, 1962, the sum of
even million (7,000,000) dollars, and the remaining thirteen
illion (13,000,000) dollars shall be appropriated and
laced at the disposal of the Administration on July 1, 1963.
or the initial expenses of organization and operation of
he Administration there is hereby appropriated, from un-
ncumbered funds in the Commonwealth treasury, the addi-
onal sum of two hundred thousand (200,000) dollars.

Section 22.—The Secretary of the Treasury is hereby
uthorized to advance to the Administration, from any
vailable funds in the Commonwealth treasury, the sums
ecessary to carry out the purposes of this act; provided,
hat the Secretary of the Treasury shall recover the sums
dvanced, on and after July 1, 1962, chargeable to the ap-
ropriation of seven million (7,000,000) dollars provided
Section 21 of this act.

Section 23.—The Administration shall submit to the
egislative Assembly at the close of each fiscal year:

(1) A financial statement;

(2) A report on the transactions made by the Adminis-
ation during the preceding fiscal year.

(3) A report on the status and progress of all the activi-
es of the Administration since its creation, or since the
ate of the last of these reports.

Section 24.—This act shall take effect immediately after
s approval.

Approved May 16, 1962.

1161

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In the
Supreme Court of the United States

OCTOBER TERM, 1968

No. 242

JORGE I. ROSSO AND WIFE CARMEN DESCARTES,
APPELLANTS,

v.

COMMONWEALTH OF PUERTO RICO,
APPELLEE.

ON APPEAL FROM THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO (CONDEMNATION PROCEEDINGS)

MOTION TO DISMISS APPEAL

RAFAEL A. RIVERA-CRUZ
Solicitor General
Commonwealth of Puerto Rico
J. F. RODRIGUEZ-RIVERA
Deputy Solicitor General
PETER ORTIZ
Assistant Solicitor General
Department of Justice
San Juan, Puerto Rico

Blanchard Press, Inc., Boston, Mass. — Law Printers

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MOTION TO DISMISS APPEAL

TO THE HONORABLE COURT:

Now comes appellee, the Commonwealth of Puerto Rico, and respectfully submits the following Motion to Dismiss Appeal, pursuant to Rule 16 (1) (b) of the Rules of this Honorable Court, on the ground that the appeal, as reflected in the Jurisdictional Statement, does not present a substantial federal question.

Statement of Facts

The facts of this case are substantially as stated by appellants in the Statement of the Case in their Jurisdictional Statement.

In summary, the Supreme Court of the Commonwealth of Puerto Rico sustained the constitutionality of the challenged local Act and the validity of the condemnation proceedings pursuant thereto, finding that there was a public necessity for the taking in harmony with the Commonwealth's legislative policy, which policy is the result of local exigencies.

Discussion of Questions Raised in Jurisdictional Statement

Four questions are raised by Appellants in their Jurisdictional Statement.

FIRST QUESTION

The first question presents no substantial federal question. It reads:

> "1. Whether, since Appellants' lands were not taken for any specific present but for an undetermined and unspecified use in the future, and there was no public necessity for the taking, said taking was arbitrary and capricious and in violation of due process of law guaranteed by the Fifth and Fourteenth Amendments to the Constitution."

The condemnation of land in this case has been held by the Supreme Court of the Commonwealth of Puerto Rico

to be authorized by the Constitution and laws of the Commonwealth and, specifically, by the challenged Act. The Constitution of the Commonwealth of Puerto Rico authorizes no exercise of the right of eminent domain except for public uses. The Commonwealth Supreme Court held, in the portions of its opinion applicable to the first question propounded:

> "For the reasons stated, we must conclude that:
>
> i. Act No. 13 of May 16, 1962 is constitutional in all of its aspects, means and methods. *It constitutes a legitimate use of the public power for the protection of what, for a community of 2,712,808 human beings, struggling in a small territory of 3,435 square miles, is their most precious value for survival: living space.**
>
> ii. The creation of the Land Administration of Puerto Rico and the powers and faculties it exercises to execute the purposes and ends of Act 13 of 1962 are constitutional.
>
> v. All acquisition of lands by the Administration with a view to complying with the provisions of Act 13 of 1962 is of public interest and of social benefit, for which condemnation proceedings may be used...." (Pages 124 and 125 of the Appellants' Appendix to Jurisdictional Statement). (Italics Ours)

In *Hairston* v. *Danville & W. R. Co.*, 208 U.S. 598, 607 this Honorable Court stated "No case is recalled where this court has condemned, as a violation of the 14th Amendment, a taking upheld by the state court as a taking for

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* The italicized portion was deleted from the quotation of said part of the opinion which appears on page 28 of Appellants' Jurisdictional Statement.

public uses in conformity with its laws. . . . *The cases cited, however, show how greatly we have deferred to the opinions of the state courts on this subject, which so closely concerns the welfare of their people.*" (Italics Ours).

In *Cincinatti* v. *Vester*, 281 U.S. 439, 446, this Honorable Court stated:

> "It is well established that in considering the application of the 14th Amendment to cases of expropriation of private property, the question what is a public use is a judicial one. *In deciding such a question the court has appropriate regard to the diversity of local conditions and considers with great respect legislative declarations and in particular the judgments of state courts as to the uses considered to be public in the light of local exigencies.*" (Italics Ours)

In *Rindge Co.* v. *Los Angeles County*, 262 U.S. 700, this Honorable Court stated:

> "In determining whether the taking of property is necessary for public use *not only the present demands of the public*, but those which may be fairly anticipated in the *future*, may be considered. *Central P.R. Co.* v. *Feldman*, 152 Cal. 303, 309, 92 Pac. 849." (Italics Ours)

In the instant case, there is a clear legislative declaration and there is a judgment of the highest court of the Commonwealth, based on the local legislative declaration in the light of local exigencies.

In *U. S. Ex Rel. T. V. A.* v. *Welch*, 327 U.S. 546, 551 (1946) this Honorable Court held:

"We think that it is the function of Congress to decide what type of taking is for a public use and that the agency authorized to do the taking may do so to the full extent of its statutory authority. United States v. Gettysburg Electric R. Co. 160 US 668, 679, 40 L ed 576, 580, 16 S Ct 427. It is true that this Court did say in Cincinnati v. Vester, 281 US 439, 446, 74 L ed 950, 955, 50 S Ct 360, that 'It is well established that in considering the application of the Fourteenth Amendment to cases of expropriation of private property, the question what is a public use is a judicial one.' But the Court's judgment in that case denied the power to condemn 'excess' property on the ground that the state law had not authorized it. And in Hairston v. Danville & W. R. Co. 208 US 598, 607 52 L ed 637, 641, 28 S Ct 331, 13 Ann Cas 1008, this Court, referring to the 'rule' later stated in the Vester Case, said that 'No case is recalled where this court has condemned as a violation of the Fourteenth Amendment a taking upheld by the State Court as a taking for public uses in conformity with its laws.' And see Madisonville Traction Co. v. Bernard, Min Co. 196 US 239, 257, 260, 261, 49 L ed 462, 469, 471, 25 S Ct 251. But whatever may be the scope of the judicial power to determine what is a 'public use' in Fourteenth Amendment controversies, this Court has said that when Congress has spoken on this subject 'Its decision is entitled to deference until it is shown to involve an impossibility.' Old Dominion Land Co. v. United States, 269 US 55, 66, 70 L ed 162, 46 S Ct 39. Any departure from this judicial restraint would result in courts deciding on what is and is not a governmental function and in their invalidating legislation on the basis of their view on

that question at the moment of decision, a practice which has proved impracticable in other fields."

Based on the above, we respectfully submit that the first question propounded raises no substantial federal question for the consideration of this Court.

SECOND QUESTION

The second question upon which jurisdiction of this Honorable Court is claimed, reads:

> "2. Whether, since Appellants' lands were not vacant, and Appellants were not engaged in land speculation, land monopolization, withholding lands from development or impeding urbanization of lands suitable therefor, but were developing their lands integrally with surrounding areas in conformity with the applicable law and regulations for the uses and purpose determined by the Commonwealth Government to be the best use and purpose for said lands, and in pursuance to the declared public policy of the Commonwealth to provide industrial, commercial, and housing development, the condemnation of said lands was not authorized by the Land Administration Act nor the Planning Board and was therefore in violation of due process of law guaranteed by the Fifth and Fourteenth Amendments."

Obviously, the question presented amounts to no more than an attempt to disturb the Commonwealth of Puerto Rico Supreme Court's construction of The Land Administration Act and its scope. That is to say, Appellants are seeking to disturb the judgment of the Supreme Court of Puerto Rico on a question of local law. It has been an

unquestioned principle that this Honorable Court will not disturb interpretations of local law by the highest court of a state unless they appeared to be clearly wrong. The same principle has been applied to Puerto Rico by this Honorable Court even before the establishment of the Commonwealth status in 1952.

In *Bonet* v. *Texas Co.* 308 U.S. 463, 470 (1940) this Honorable Court stated:

> "For over sixty years this Court has consistently recognized the deference due interpretations of local law by such local courts unless they appeared to be clearly wrong. From Sweeney v. Lomme, 22 Wall. 208, decided in 1874, to Bonet v. Yabucoa Sugar Co., supra, decided in 1939, repeated admonitions to that effect have been given. That rule is founded on sound policy. As this court recently stated, 'Orderly development of the government of Puerto Rico as an integral part of our governmental system is well served by a careful and consistent adherence to the legislative and judicial policy of deferring to the local procedure and tribunals of the Island.' Bonet v. Yabucoa Sugar Co., supra, p. 510.
>
> "We now repeat once more that admonition. And we add that mere lip service to that rule is not enough. To reverse a judgment of a Puerto Rican tribunal on such a local matter as the interpretation of an act of the local legislature, it would not be sufficient if we or the Circuit Court of Appeals merely disagreed with that interpretation. Nor would it be enough that the Puerto Rican tribunal chose what might seem, on appeal, to be the less reasonable of two possible interpretations. And such judgment of reversal would not be sustained here even though we felt that of several possible interpretations that of the Circuit

Court of Appeals was the most reasonable one. For to justify reversal in such cases, the error must be clear or manifest; the interpretation must be inescapably wrong; the decision must be patently erroneous."

It appears that this is not a substantial federal question on appeal.

THIRD QUESTION

The third question raised is stated as follows:

"3. Whether, in so far as the Land Administration Act permits the sale of condemned lands to developers with the restriction that sales by them of the units formed and constructed by them to the public shall be made at prices 'limiting through a proper formula their profits with respect to the land and all other costs' of the development, it permitted the fixing of prices which would be arbitrary, discriminatory and demonstrably irrelevant to the policy adopted by the Legislature, not in fair and open competition with units of the same general class formed and constructed by others, without procedural due process, in violation of due process of law and in denial of the equal protection of the laws guaranteed by the Fifth and Fourteenth Amendments to the Constitution."

The Statement of the Case, as submitted by Appellants, is the best evidence to show that this is a hypothetical matter, not supported by a genuine controversy and, as such, beyond the jurisdictional ambit of this Court.

In *Cincinatti* v. *Vester* (supra) it was stated:

"It is an established principle governing the exercise of the jurisdiction of this court, that it will not decide important constitutional questions unnecessarily or hypothetically. Liverpool, N.Y. & P.S.S. Co. v. Emigration Comrs. 113 U.S. 33, 39, 28 L ed. 899, 901, 5 Sup. Ct. Rep. 352; Siler v. Louisville & N.R. Co. 213 U.S. 175, 191, 193, 53 L. ed. 753, 757, 758, 29 74 L. ed. 956 Sup. Ct. Rep. 451; United States ex rel. Atty. Gen. v. Delaware & H. Co. 213 U.S. 366, 407, 53 L. ed. 836, 848, 29 Sup. Ct. Rep. 527."

It appears that the third question does not constitute a substantial federal question.

FOURTH QUESTION

The appellants present their fourth question as follows:

"4. Whether, the Land Administration Act delegates legislative powers to the Land Adminstration since no sufficiently basic standards and safeguards, definite and certain policy and rule of action for guidance to administer said law is provided therein or otherwise and since the Act vests in the Land Administration discretion which is arbitrary and power to determine what that law should be, in violation of the constitutional principle of separation of powers guaranteed by the Constitution and by Article III, Section I of the Constitution of Puerto Rico adopted pursuant to the requirements of Section 3 of Public Law 600, 81st Congress (Act of July 3, 1950, c. 446; 64 Stat. 314, Titles 1, 2-3 LPRA, p. 137) and approved by Joint Resolution of the Congress (Public Law 447; 82nd Congress, J.R. of July 3, 1952, c. 567; 66 Stat. 327, Titles 1, 2-3 LPRA, pp. 144-145)."

The appellants fail to identify the federal source necessary in order for this Honorable Court to pass judgment on the alleged violation, by the Commonwealth of Puerto Rico, of the principle of separation of powers decreed by its own constitution. The cases that have been decided by this Honorable Court establish that a violation of a State's own requirement of separation of powers does not present a substantial federal question. *Dreyer* v. *Illinois,* 1902, 187 U.S. 71, 83-84; *Carter* v. *Caldwell,* 1906, 200 U.S. 293, 297; *Prentis* v. *Atlantic Coast Line,* 1908, 211 U.S. 210, 225.

Clearly, the above question does not present a substantial federal question.

Conclusion

For the above reasons, it appearing that Appellants' Jurisdictional Statement fails to indicate the presence of any substantial federal question and that, on the contrary, the questions raised are matters of local law of the Commonwealth of Puerto Rico, Appellee respectfully moves this Court to enter an Order dismissing this appeal.*

San Juan, Puerto Rico, July 12, 1968.

(s) RAFAEL A. RIVERA-CRUZ
Solicitor General
Commonwealth of Puerto Rico
J. F. RODRIGUEZ-RIVERA
Deputy Solicitor General
PETER ORTIZ
Assistant Solicitor General
Department of Justice
San Juan, Puerto Rico

---

* See *Porto Rico Railway, Light & Power Co.* v. *Miranda,* 289 U.S. 731; *Cardona* v. *Quinones,* 240 U.S. 83, 88; *Diaz* v. *Gonzalez,* 261 U.S. 102, 105, 106; *Cami* v. *Central Victoria, Ltd.,* 268 U.S. 469, 470; *American Trading Co.* v. *Heacock Co.,* 285 U.S. 247, 261.

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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 242

JORGE I. ROSSO AND WIFE CARMEN DESCARTES,
APPELLANTS

v.

COMMONWEALTH OF PUERTO RICO
APPELLEE.

BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS APPEAL

WALTER L. NEWSOM, JR.
P.O. Box 2152
San Juan, Puerto Rico 00903
BROWN, NEWSOM & CORDOVA
Attorneys for Appellants

JAMES B. DONOVAN
Of Counsel

Blanchard Press, Inc., Boston, Mass. — Law Printers

INDEX

FIRST QUESTION 1
SECOND QUESTION 13
THIRD QUESTION 14
FOURTH QUESTION 16
CONCLUSION 20

Table of Citations

Cases

Berman v. *Parker*, 348 U.S. 26, 32 8
Bonet v. *Texas Co.*, 308 U.S. 436, 470 13
Brown v. *United States*, 263 U.S. 78, 84; 44 S. Ct. 92, 94, 68 L. ed. 171, 181 10
Carter v. *Caldwell*, 200 U.S. 293 19
City of Cincinnati v. *Vester*, 281 U.S. 439, 443, 446, 74 L. ed. 950, 954-955, 30 S. Ct. 360 ..... 2, 3, 8, 10, 15
Dreyer v. *Illinois*, 187 U.S. 71 19
Hairstone v. *Danville & W. R. Co.*, 208 U.S. 598, 607 (1908) 2, 3
Mora v. *Mejias*, 206 F.2d 377, 386-388 ..... 2, 19
People of Puerto Rico v. *Eastern Sugar Associates*, 156 F.2d 316, 321, cert. den. 67 S. Ct. 190, 329 U.S. 771, 91 L. ed. 664 ..... 8, 11, 15
Prentis v. *Atlantic Coast Line Co.*, 211 U.S. 210 19
Rindge Co. v. *Los Angeles County*, 262 U.S. 700 3
United States Ex. Rel. T.V.A. v. *Welch*, 327 U.S. 546, 552 ..... 3, 6, 7
United States v. *Gratiot*, 39 U.S. 526, 14 Pet. 526, 10 L. ed. 573 19
United States v. *San Francisco*, 310 U.S. 16, Reh. den 657 19

Page

Statutes

Land Administration Act, Sec. 7(k) and (1), Sec. 14(g) 9, 10
Public Law 600, 81st Congress 17
Public Law 447, 82nd Congress 17
1 LPRA 148-149 and 259 17

Miscellaneous

6 Nichols on Eminent Domain, 237 7
2 Nichols, Eminent Domain, 2d Ed., pp. 987-989 12
U. S. Census of Population 1960, Puerto Rico, U. S. Department of Commerce, Tables 1 to 11 and 32, Series PC(1)A, pp. 53-113 5

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COMMONWEALTH OF PUERTO RICO
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BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS APPEAL

Appellee contends that the questions raised in the Jurisdictional Statement are not substantial and that therefore the appeal should be dismissed.

First Question

As to the first question raised, whether since the taking was not for any specific present but for an undetermined and unspecified use in the future, there being no public necessity therefor, it was without due process in violation of

the Fourteenth and Fifth Amendments, appellee's contention is grounded in large measure on the statement of Mr. Justice Moody in the case of *Hairstone* v. *Danville & W.R. Co.*, 208 U.S. 598, 607 (1908) that

> "... No case is recalled where this Court has condemned as a violation of the 14th Amendment, a taking upheld by the state court as a taking for public uses in conformity with its laws."

and on the circumstance that the Supreme Court of Puerto Rico upheld the taking in this case.[1] In the *Hairstone* Case, however, this Court did consider as substantial the question raised as to whether the taking was for a public use (land for a railroad siding), and it painstakingly revjewed thoroughly both the evidence and the law in plenary proceedings.

So too while in the case of *Cincinnati* v. *Vester,* 281 U.S. 439, 446, cited and relied upon by appellee, this Court per Mr. Chief Justice Hughes said:

> ". . . In deciding such a question the Court has appropriate regard to the diversity of local conditions and considers with great respect legislative declarations and in particular the judgments of state courts as to the uses considered to be public in the light of local exigencies. . . .".

the question as to whether the taking was for a public purpose, was considered to be substantial and the case was reviewed in plenary proceedings and the judgment of the Federal District Court enjoining the city from taking the property was affirmed.[2]

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[1] Both the Fifth and Fourteenth Amendments are specified in this question in view of the decision of the United States Court of Appeals in the case of *Mora* v. *Mejias*, 206 F. 2d 377.

[2] In the Vester Case (281 U.S. 443) this Court said: "The ordinance providing for the excess appropriation was not more specific, declaring simply that it is 'in furtherance of the public use' described as the widening of Fifth Street, and 'for the most complete enjoyment and preservation of the benefits to accrue from said public use'. In what way, the excess condemnation of these properties was in fur-

And in the case of *Rindge Co.* v. *Los Angeles County,* 262 U.S. 700, also cited and relied upon by appellee, this Court considered the question as to whether the taking was for a public use to be substantial and subjected the judgment of the state court to plenary review. In the case of *U.S. Ex. Rel. T.V.A.* v. *Welch,* 327 U.S. 546, also cited by appellee, no judgment of a state court, nor any state law, was involved. After plenary review of the question raised as to whether the taking was for a public use, this Court affirmed the judgment below that the taking was not in violation of due process.

The taking in each of these cases cited by appellee excepting the *Vester* Case (for a railroad siding in the *Hairstone* Case; for a highway in the *Rindge* Case and as necessary to a T.V.A. Dam and Reservoir in the *Welch* Case) were for specific present uses which seemed obviously public. Yet this Court did not regard as unsubstantial in any of them the question as to whether the taking was for a public use, and it carefully reviewed each of them in plenary proceedings. In the *Vester* Case, no specific present or future public use was alleged nor shown, and as held by this Court and the court below, the taking violated the constitutional requirement of due process.

Appellee further suggests that the said question is not substantial because of the statements of this Court in the *Hairstone* and *Vester* Cases as to its appropriate regard to the diversity of local conditions and local extigencies. And in this respect appellee places great emphasis on the statement in the opinion below that the taking

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therance of the widening of the street, and why it was necessary for the complete enjoyment and preservation of the public use of the widened street are not stated and are thus left to surmise." In the present case the purpose of the taking and how it is to be in furtherance of the objects and purposes of the Land Administration Act is also left to surmise.

> "... constitutes a legitimate use of the public power for the protection of what, for a community of 2,712,808 human beings, struggling in a small territory of 3,435 square miles, is their most precious value for survival: Living space."

It was not, however, the purpose of the Land Administration Act, nor this taking, to increase the so called amount of "living space" (nor indeed can the amount of land available therefor be increased other than by filling swamp areas and embayments and other areas suitable therefor along the coastlines of Puerto Rico) but to (1) decrease the cost of living space and/or (2) stop alleged speculation in land and (3) force allegedly monopolistic landowners to part with their lands.

If by "living space" land is meant, the protection referred to must be protection against the evils alleged in the Act, namely (1) the monopolization of land, (2) speculation in land and (3) withholding it from use, i.e. from the market. But here appellants were not monopolizing or speculating in land nor withholding it from use. On the contrary, they were developing it for residential housing and an appropriate amount of commercial and industrial facilities, the recognized best use for which it was suitable. If by "living space" residential housing is meant, then appellants' development would increase the amount available and protect against an inappropriate use of the land.[3]

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[3] The development of the lands being carried out by Appellants was held by the Land Administration to be a development in bad faith because preliminary plans thereof had not been filed in the Planning Board prior to presentation in the Legislature of the bill which was enacted into the Land Administration Act, and this decreed bad faith was the reason or motive for the taking. Neither the said Act nor any other statute empowers the Land Administration to issue such a decree, nor is any public purpose served by a taking for such reason. The innate unfairness of such decree becomes more apparent in view of the arbitrary and unconstitutional suspension of the Planning Board Law by its President (and Vice Chairman of the Land Administra-

It is true that Puerto Rico is a relatively small land area and its overall density of population is slightly less than 800 persons per square mile. The density in the metropolitan area of San Juan is much greater—588,800 inhabitants according to the 1960 census,—(see Tables 1 to 11 in Series PC(1)A of *U.S. Census of Population 1960, Puerto Rico,* U.S. Department of Commerce) but when compared with urban areas in other parts of the United States and the world it does not present anything unique. Due to the program of grants of tax exemption to new industries and certain other specific industries, the fact that Puerto Rican source income is not taxable under the United States Internal Revenue Code, that corporate and partnership income taxes under Puerto Rican law are substantially lower than United States corporate income taxes, that wages have been lower than on the continent, and that incentives and other advantages have been available from the local government to capital investment in Puerto Rico during the past 15 years and at the present time, a tremendous industrial expansion has taken place and is taking place particularly in the metropolitn areas, especially San Juan, and with F.H.A. financing of housing and federal aid to public housing, the movement of rural population to urban centers has been very great particularly in the San Juan area. During the decade from 1950 to 1960 population in the San Juan metropolitan area increased 26.4%. (Pages 53-113, Table 32 of Series PC(1) of *U.S. Census of 1960, Puerto Rico,* U.S. Department of Commerce). Neither this urban growth nor the problems arising therefrom are unique to Puerto Rico but are essentially the same throughout the cities of the United States and other parts of the world.[4]

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tion) from July 11, 1961 (nearly a year before the Land Administration bill was presented) until June 1962 after the bill was enacted into law.

[4] Due to the subtropical climate neither artificial heating nor cold weather clothes are required in Puerto Rico as in the cities in continental United States.

One of the major problems of urban growth has been and is the increased cost of housing, one of the important elements of which is the increase in the cost of land. The evils of monopolization, speculation and withholding from the market are common throughout the United States. The problem is not the scarcity of land, "living space", but increased cost. The map forming part of the Scope of the Project (see Jurisdictional Statement, p. 127) shows large areas of vacant land in the metropolitan area of San Juan, and there is no evidence tending to show lack of land. Moreover, Puerto Ricans are United States citizens with unlimited access to any and all parts of the Nation. There is no reason for the struggle in Puerto Rico to be any more severe than in other parts of the Nation. Puerto Ricans recognize this, and the number who have moved to continental United States in the past has been extensive, there being today some 2,000,000 Puerto Ricans who presently reside in continental United States.

While local conditions and exigencies will receive great respect and consideration by this Court certainly there are none here involved that would justify the condemnation of land for other than a public use, in violation of constitutional due process, nor to make the question as to public use here raised a question without substance.

Appellee finally urges that the said question is not substantial in view of this Court's statement in the *Welch* Case (ibid 327 U.S. 552) that

> "... But whatever may be the scope of the judicial power to determine what is a 'public use' in Fourteenth Amendment controversies, this Court has said that when Congress has spoken on this subject 'Its decision is entitled to deference until it is shown to involve an impossibility.' *Old Dominion Land Co.* v. *United States*, 269 U.S. 55, 66, 70 L. ed. 162, 46 S. Ct. 39."

Mr. Justice Holmes made this statement in the *Old Dominion Land Co.* Case in answer to the contention that the property taken was not for "Sites for Military Purposes . . . For quartermaster warehouses . . ." as specifically set out in one of the Congressional Acts involved, but to prevent warehouses built on the property by and belonging to the United States from reverting to the landowner upon expiration of the time to remove them upon termination of a lease. The taking in that case and the purpose thereof were specifically authorized by Congress, whereas the taking of Appellants' lands and purpose therefor were not specifically authorized by the Commonwealth Legislature. Obviously a taking for military sites—for quartermaster warehouses is a taking for a specific public purpose, and the eminent Judge's statement that until such use was shown to be an impossibility the Congressional declaration would be respected is obviously sound. (See *6 Nichols on Eminent Domain,* 237). That statement, however, does not mean that the question of whether a taking is for a public use is not in the ultimate analysis, a judicial question. All of the said cases cited by appellee hold the question to be a judicial question, and while Mr. Justice Black also said in the majority opinion in the *T.V.A.* Case (immediately following the quotation of the statement of Mr. Justice Holmes as to impossibility)

> "... Any departure from this judicial restraint would result in courts deciding on what is and is not a governmental function and in their invalidating legislation on the basis of their view on that question at the moment of decision, a practice which has proven impracticable in other fields."

Mr. Justice Frankfurter in his concurring opinion (327 U.S. 557-558) tells us, however, that

> "'. . . But the fact that the nature of the subject matter gives the legislative determination nearly immunity from judicial review does not mean that the power of review is wanting. All the cases cited in the Court's opinion sustaining a taking recognize and accept the power of judicial review. I assume that in citing these cases the Court again recognizes the doctrine that whether a taking is for a public purpose is not a question beyond judicial competence."

And Mr, Justice Douglas, speaking for this Court in unanimity so stated in the subsequent case of *Berman* v. *Parker*, (348 U.S. 26, 32) pointing out, however, that

> "The rule of the judiciary in determining whether that power (eminent domain) is being exercised for a public purpose is an extremely narrow one." (Ibid. 348 U.S. 33).

In the case of the *People of Puerto Rico* v. *Eastern Sugar Associates*, 156 F. 2d 316, 321, cert. den. 67 S. Ct. 190. 329 U.S. 771, 91 L. ed. 664, it was said

> ". , . Thus, since the lands are sought to be condemned 'to carry out *all* (italics supplied) of the objects or purposes of the Land Law'. and condemnation is sought both under that law and the Vieques Act, the lands may eventually be put if the appellant prevails, to any one or all of the four uses. Therefore, if one of these uses, each considered, however, as a part of a broad, integrated program of agrarian reform as will be pointed out hereafter, is not public, the petition was properly dismissed."

(See also *City of Cincinnati* v. *Vester*, 281 U.S. 439, 446, 74

L. ed. 950, 954-955, 30 S. Ct. 360, and the Opinion of the Superior Court below).

How the Land Administration could know or assert that the lands were taken for any and all of the purposes and objects of the Land Administration Act, when neither it nor any other branch of the Commonwealth Government had any known need or use for the lands immediately or in the future, nor any plans or projects for their use, is difficult if not impossible or reasonable conception.

That the taking is for the establishment of a reserve of land to be retained for a possible future public use offers no solution to the problem, for again since there are no plans or projects made or in the making, nor any master plans, it was not possible for appellee to have known of any use to which the Commonwealth might put the lands in the future. Since the power of eminent domain is always available, why not await the time the lands may be needed for a public use, presently or within a reasonably foreseeable time rather than blindly taking them now without knowing whether they will be needed for any public purpose? Retention of land in reserve would reduce the available supply of land and tend to increase price, and it would prevent its use—use for instance as living space. Section 7(q) of the Land Administration Act (Jurisdictional Statement, pp. 145-147) empowers the Land Administration

> "To acquire, in the manner provided in this Act, private property and keep it in reserve for the benefit of the People of Puerto Rico, for the use of the Commonwealth of Puerto Rico or its agencies. . .".

and there is no limitation on the amount of time the land may be held in reserve, except that whenever land is condemned for specific purposes of public-work development and social welfare, such purposes shall be carried out in a period of years that does not exceed 15.

Certainly there is no public purpose or use involved in taking and holding land in reserve for an unlimited period, nor indeed for 15 years, particularly since it may very well turn out that it will never be devoted to any public use. The purpose or object for the reserve appears in sub-paragraph (c) of the Statement of Motives of the Act (Jurisdictional Statement, p. 141) where it is declared that the rising price of land "affects or prevents the implementing of the master plans", and in substance that by acquiring (land) now before the price further increases, money will be saved on any public project in which the land may be used at some time in the future—and if it turns out there is no public need or use for it at some time in the future it can be sold at a profit.[5] But there are no master plans to be implemented, and the possibility of a saving, a profit, to the taker does not satisfy the constitutional requirement of public purpose other than a profit to the taker (*Brown* v. *United States*, 263 U.S. 78, 84, 44 S. Ct. 92, 94, 68 L. ed. 171, 181; see also *City of Cincinnati* v. *Vester*, supra). Moreover, since the price of the land taken may decrease rather than increase, even the advantage of a saving or profit, might not result from the taking. Or it is possible that the increased price be less than the cost of acquisition plus, interest on investment plus cost of maintenance plus taxes.[6] The matter is one of speculation to say the least.

Furthermore, as set out in question 4 raised (Jurisdictional Statement, pp. 32-35, the land condemned may also be used to effectuate price control in violation of the due process

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[5] The Act empowers the Land Administration to sell its lands in the normal course of its operations, to sell it when it no longer regards the land as useful for the purposes of the Act, after first offering it to the former owner, or his heirs, at a price not less than market value at the time of such offer. (See Section 7(k) and (l) and Section 14(g).

[6] The Act provides that the Land Administration shall pay taxes on its land.

and equal protection of the laws clauses of the Fifth and Fourteenth Amendments. Surely that use would not be for a public purpose.

As said in *People of Puerto Rico* v. *Eastern Sugar Associates*, supra, at 156 F. 2d 324

> "... Our function is to pass upon the statutes before us without regard to our views of the wisdom of the political theory underlying them; (*McLean* v. *Arkansas*, 211 U.S. 539, 547, 29 S. Ct. 206, 53 L. ed. 315) it is our duty to determine whether their enactment rested upon an arbitrary belief of the existence of the evils they were intended to remedy, and whether the means chosen are reasonably calculated to cure the evils reasonably believed by the Legislature to exist. *Tanner* v. *Little*, 240 U.S. 369, 385, 36 S. Ct. 379, 60 L. ed. 691..."

Assuming that land speculation, land monopolization, and withholding of land from the market and the consequent increase in the price of land and of housing are existing evils, as we have shown (Jurisdictional Statement, pp. 32-36) the means chosen by the statute are not reasonably calculated to cure those evils. Those means, viz., the condemnation of land, the subsequent sale to a housing developer at less than cost (and hence less than market value) upon condition that he limit the potential profits on sales of the units constructed to the purchasers, undetermined and indeterminate—involve unconstitutional means of price control in unfair competition with other housing developers, and merely encourage speculation by the purchasers of the units. Moreover, it is the subsidy given—sale of land below cost—which brings about a decrease in the price of the units constructed, not the condemnation. If thought neeessary such a subsidy can be granted to persons determined to be in need of it without condemnation of lands which merely

increase the cost of land and hence the amount of the subsidy. And if the land is not sold at less than its cost (market value plus cost of taking) no reduction in cost of housing would result.

As we have said, the retention of land in reserve with the object of saving on the cost of some possible public project in the future, or of making a profit on its sale if not devoted to a public use, does not satisfy the constitutional requirement of public use. Moreover, it does not constitute means reasonably calculated to cure the declared evil of the increasing price of land.

The power of eminent domain is more harsh and peremptory in its exercise and operation than any other (*2 Nichols, Eminent Domain,* 2d Ed., pp. 987-989) and obviously it is not to the public benefit that it be employed when not necessary and not calculated to cure the evils for which its exercise is authorized.

In this case, there was no land speculation, no monopolization of land, and no withholding of land from the market. On the contrary, appellants were developing their lands for admittedly the best use—a housing development—pursuant to the applicable law and regulations of the Planning Board, and considerable work had been done with the approval of the Planning Board and other Government Agencies in the development, as pointed out in the Jurisdictional Statement. The only and real reason for the taking was that the preliminary plans of the development had not been officially filed with the Planning Board at the time the bill enacted into the Land Administration Act was presented to the Legislature, although they had been discussed with the Board. The Executive Director of the Land Administration said that the lands would not be condemned if the Planning Board approved the develop-plans, and the Planning Board refused to approve the plans, not because they were were not in full accord with the law and regulations and in accord

with the best and most efficient use to which the lands could be put, but because preliminary plans had not been filed at the time stated, i.e., that they were filed in bad faith as decreed by the Governing Board of the Land Administration, and the Land Administration had become interested in acquisition of the lands. And the Planning Board's unconstitutional suspension of the law in July 1961—actually prior to acquisition of all of the lands by appellants—was the cause for not having filed the plans earlier.

It is submitted that the first question is substantial, and should be reviewed by this Court in plenary proceedings.

Second Question

Appellee contends this question is not substantial because it amounts to no more than an attempt to disturb the Commonwealth Supreme Court's construction of the Land Administration Act, a local statute, citing in support of this contention *Bonet* v. *Texas Co.*, 308 U.S. 436, 470, wherein this Court reaffirmed the doctrine that to justify a reversal of the Commonwealth Supreme Court's interpretation of a local statute, the error must be clear or manifest; the interpretation must be inescapably wrong; the decision must be patently erroneous.

The Commonwealth Supreme Court in its opinion in the present case held and said

> "The Scope of the Project approved by the Planning Board constituted a master plan in itself . . ."

(Jurisdictional Statement, final paragraph of footnote p. 100). And in effect it said that the taking was to implement this master plan, was clearly authorized by the statute and not inviolation of constitutional due process of law. Yet appellee in response to Request For Admissions had

categorically denied that the Scope of the Project was a master plan (Record, par. 50, p. 224). And in answer to Interrogatories appellee had stated that the Planning Board had not prepared or adopted a master plan for the area embraced in the Scope of the Project, nor any part thereof (Record, pars 29 and 30, p. 235 and pars. 29 and 30, p. 244).

As we pointed out (Jurisdictional Statement, p. 13, footnote 13) local law specifically and expressly requires notice and public hearings prior to adoption and approval by the Planning Board of any master plan and approval by the Governor of Puerto Rico. Appellee admitted that the Scope of the Project was approved by the Planning Board without any notice or public hearings. (Record, par. 47, p. 224 and par. 47, p. 227).

This decision of the Commonwealth Supreme Court that the Scope of the Project was a master plan is clearly and manifestly erroneous, it is inescapably wrong and is patently erroneous. It more nearly represents a total and utter disregard of local statutory law rather than a construction or interpretation thereof.

There are it is believed several other clear, manifest, inescapable and patent errors in the decision of the Commonwealth Supreme Court which, it is believed, may be more appropriately briefed and argued in plenary proceedings.

A taking of private property by a government agency, official or corporation without, or contrary to, statutory authority violates constitutional due process, and it is therefore submitted that the second question is substantial.

Third Question

It is said by appellee that this question is not substantial because it is a hypothetical matter and not supported by a genuine controversy.

As we have heretofore pointed out where a taking is

declared to be for any or all of the objects or purposes of a statute, if any one of those objects or purposes does not satisfy the constitutional requirement of public use the taking violates due process of law. (See *People of Puerto Rico* v. *Eastern Sugar Associates,* and *City of Cincinnati* v. *Vester,* supra).

To sustain appellee's contention that this third question is not substantial the statement of this Court in the Vester Case that it will not decide important constitutional questions unnecessarily or hypothetically, is cited.

In the Vester Case this Court held that (1) legislative declarations and decisions of state courts as to what constitutes a public use are binding on it when called upon to determine whether the taking is without due process as being for a non-public use; (2) that a statement by a government agency (City Council) that an excess condemnation, sought in connection with a taking of property for public use, is in furtherance of such public use, is not conclusive; (3) that a statutory requirement that a declaration of intent to condemn property shall define the purpose of the appropriation is not satisfied by a general statement that it is in furtherance of and necessary for the complete enjoyment and preservation of said public use, and (4) we quote, (28 U.S. 448-449):

> "... The validity of the excess condemnation upon the ground of non-compliance with the state law was challenged in the bills of complaint in these suits. The respondents have made the same contentions here. The City has not met it by referring us to any decision of the courts of Ohio construeing the statute involved or sustaining the excess appropriation in the absence of a definition of purpose. It is an established principle governing the exercise of the jurisdiction of this Court that it will not decide important constitutional questions unnecessarily or hypothetically...."

And this Court affirmed the decrees of the United States District Court restraining the taking by the City.

In the present case the question raised is under the rule that where the taking is for any or all of the objects or purposes of the statute, if any one is not a taking for a public purpose the taking will be in violation of due process, and we have pointed out (Jurisdictional Statement, par. 4, pp. 32-36) uses of the property permitted under the statute which we contend are not public uses and that violate due process of law and the equal protection of the laws and represent means not reasonably calculated to cure the evils declared by the statute to exist.

We submit that there is nothing hypothetical in this question, that its solution is necessary, that the court below decided it and that its decision is clearly, manifestly, inescapably and patently erroneous, and that this Court is not bound by the decision. We submit, therefore, that the question is substantial.

Fourth Question

The Fourth Question (Jurisdictional Statement, par. 5, pp. 36-37) is not substantial, appellee contends, because (1) we do not "identify the federal source necessary in order" to enable this Court to determine the question as whether the statute violates the constitutional doctrine of separation of powers, and (2) because the violation of a state's own requirement as to separation of powers does not present a substantial question under the Constitution.

Section 1 of Article I of the Constitution provides that all legislative powers granted therein shall be vested in the Congress. The second paragraph of Section 3 of Article IV of the Constitution extends this legislative power to territories in the following terms:

> "The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other property belonging to the United States; . . .".

In the exercise of such power the Congress authorized the adoption by the People of Puerto Rico of a constitution which would provide a republican form of government and would include a bill of rights which if found by the President of the United States to be in accordance with the authority granted and in conformity to the provisions of the Constitution would be transmitted to the Congress, and when approved by the Congress would be effective in accordance with its terms. (Public Law 600, 81st Congress). Such a constitution was adopted, transmitted to the Congress and approved by it with certain amendments, among which was a provision that "any amendment or revision of this constitution shall be consistent with the resolution enacted by the Congress of the United States approving this constitution, with the applicable provisions of the Constitution of the United States, with the Puerto Rican Federal Relations Act, and with Public Law 600, Eighty-first Congress, adopted in the nature of a compact." (Public Law 447, 82nd Congress). The said amendments were accepted by the People of Puerto Rico January 29, 1953. (1 LPRA, pp. 148-149) and Section 3 of Article VII of the Commonwealth Constitution provides that any amendment or revision shall be consistent with the applicable provisions of the Constitution of the United States, etc. (1 LPRA, p. 259).

Thus the Commonwealth Constitution is not only an Organic Act approved by the people of Puerto Rico within the basic standards and safeguards and policy specified by the Congress, but is also legislation authorized by, adopted and approved by the Congress under the powers to dispose

of and make rules and regulations as to the territories. And any revision or amendment must be in conformity with the Constitution of the United States. Article III of the Commonwealth Constitution which vests legislative power in the Legislative Assembly is in accord with Section I, Art. 1 of the Constitution of the United States, and with the concept of a republican government one of the basic tenets of which is the doctrine of separation of powers, and neither the Legislative Assembly, nor the Supreme Court of Puerto Rico, nor the Governor of Puerto Rico, it is submitted, may abrogate this provision without violation of the Constitution of the United States and the doctrine of the Separation of Powers embraced in the Constitution. The Legislative Assembly of the Commonwealth, it is submitted, has now power, in fact and law, to delegate legislative powers to any other department of the Commonwealth Government, as here, for instance, a public corporation within and controlled by the Executive Department.

There are many diverse views in Puerto Rico and elsewhere as to constitutional nature of the Commonwealth of Puerto Rico running the full gamut from a sovereign and separate state or republic linked to the United States by mutual agreement, through a self-governing territory to a mere unincorporated territory with an Organic Act adopted by the Congress and subject to the latter's powers under Section 3 of Article IV of the Constitution. In the United Nations, the official view of the Federal Government seems to be that the Commonwealth is a self-governing territory subject to the provisions of the Constitution of the United States. Conceivably this Court might hold that the Congress has disposed of Puerto Rico as a Territory, acting under its powers under Section 3 of Article IV of the Constitution, but upon certain conditions one of which is that it be subject to the provision

of the Constitution that Legislative powers be vested in the Legislative Assembly of the Commonwealth and not elsewhere. The term "territory" as used in Article IV, Section 3 of the Constitution was said by this Court to be merely descriptive of one kind of property, and is equivalent to the word "lands" (*U.S.* v. *Gratiot,* 39 U.S. 526, 14 Pet. 526, 10 L. ed. 573), and Congress may limit the disposition of land by such conditions as it regards as necessary or beneficial (*United States* v. *San Francisco,* 310 U.S. 16, Reh. den. 657).,

Puerto Rico is obviously not a state in the sense of the word when applied to a state of the Union. It was not one of the original states and has never been admitted as a state. (See the discussion of Chief Judge Magruder in *Mora* v. *Mejias,* 206 F. 2d 377, 386-388). The cases cited by appellee on page 10 of its motion refer to states of the Union. The first *Dreyer* v. *Illinois,* 127 U.S. 71, sustained the validity of an indeterminate sentence law of Illinois and of the Board created thereby. The standards and guides set up by the statute, it is submitted, made the functions of the Board administrative and there was no delegation of legislative powers. The second case cited, *Carter* v. *Caldwell,* 200 U.S. 293 reversed the Circuit Court's grant of a writ of habeas corpus and discharged applicant from appearance as a witness before a legislative committee of West Virginia, on the ground that the matter was one for the courts of the state. In the third case, *Prentis* v. *Atlantic Coast Line Co.,* 211 U.S. 210, this Court, per Mr. Justice Holmes for the majority held that an order of the Virginia State Corporation fixing passenger rates, from which an appeal to the Supreme Court of Virginia lay, even though assumed to be confiscatory, should, as a matter of comity, be attacked by petitioner on appeal to the state Supreme Court, prior to seeking to enjoin it in a Federal Court The remarks in the decision by Mr.

Justice Holmes as to the doctrine of separation of powers, it would seem, do not apply to the question raised in the present case,

It is submitted that the identity of the constitutional source of the doctrine of separation of powers is specified, and that the inclusion of that doctrine in the Commonwealth Constitution is the consequence of federal not state law, and that the fourth question is substantial.

Conclusion

For the above reasons and authorities it is submitted that appellee's motion to dismiss the appeal should be denied.

San Juan, Puerto Rico, August 28, 1968.

WALTER L. NEWSOM, JR.
P.O. Box 2152
San Juan, Puerto Rico 00903
BROWN, NEWSOM & CORDOVA
Attorneys for Appellants

JAMES B. DONOVAN
Of Counsel

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IN THE

Supreme Court of the United States

October Term, 1968

No. 242

JORGE I. ROSSO and wife CARMEN DESCARTES,
Appellants,

v.

COMMONWEALTH OF PUERTO RICO,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

PETITION FOR REHEARING

WALTER L. NEWSOM, JR.
P.O. Box 2152
San Juan, Puerto Rico 00903

BROWN, NEWSOM & CORDOVA
Attorneys for Appellants

JAMES B. DONOVAN
MAURICE ROSENBERG
Of Counsel

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ON APPEAL FROM THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

PETITION FOR REHEARING

Appellants present their petition for a rehearing of the above-entitled cause and, in support thereof, respectfully show:

Grounds for Rehearing

The following are substantial grounds available to petitioners and not previously presented to the Court.

The taking of Appellants' lands by the Commonwealth as part of a "mechanism . . . to freeze and regulate the price of land" (124) * in Puerto Rico presents a substantial question of violation of rights guaranteed by the Fifth Amendment. That question cannot be, and has

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* Page references are to Appellants' Jurisdictional Statement, Appendix B.

not been, ultimately answered by the decision of the court below to the preclusion of effective review by this Court.

(1) When the taking of private property by a State or Commonwealth is justified as within the "public use" provision of the Fifth Amendment, the constitutional meaning and application of this provision are open to scrutiny by this Court.

(2) Although this Court has given deference to the view of a state's highest court upon what constitutes a Fifth Amendment public use, its revisory role should not be reduced to an idle gesture. The decision of the court below calls for correction; it goes beyond any prior case in decreeing that the outright taking of private property is necessarily permitted as a means of exercising regulatory power.

(3) The fallacious reasoning of the court below appears from its opinion (123-125), which declares that inasmuch as regulating land prices was a proper legislative objective, *therefore* the condemnation of private property in pursuance of the regulatory scheme must automatically be proper as a "public use."

(4) There is no warrant in law or reason for the doctrine that what the Commonwealth may regulate, the Commonwealth may take by eminent domain. Such a proposition would mean that the power to regulate apartment rental charges would carry *ipso facto* the power to condemn land and apartment buildings to further the regulatory purpose. Particularly under the extraordinary circumstances presented by the record here, such a doctrine is constitutionally impermissible.

(5) The special circumstances of this case that call for constitutional review go beyond even the erroneous equating of the power to condemn with the power to regulate.

Here, the statute purports to sanction what the agency has proceeded to do: to take private lands for a future use, unspecified and wholly undetermined, in order to transfer it from one man to another who will be identified according to future official will or whim. Endless possibilities of arbitrary favoritism and abuse are thus encouraged. Against such invitations to injustice, the Fifth Amendment's safeguards surely stand guard.

CONCLUSION

For the foregoing reasons it is respectfully urged that this petition for a rehearing be granted, and that, upon further consideration, the judgment of the Supreme Court of the Commonwealth of Puerto Rico be reversed.

WALTER L. NEWSOM, JR.
P.O. Box 2152
San Juan, Puerto Rico 00903

BROWN, NEWSOM & CORDOVA
Attorneys for Appellants

JAMES B. DONOVAN
MAURICE ROSENBERG
Of Counsel

Certificate of Counsel

I, JAMES B. DONOVAN, of counsel for the above-named appellants, do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

JAMES B. DONOVAN,
Counsel for Appellants.

SUPREME COURT OF THE UNITED STATES

October Term, 1968.

ROSSO ET AL. *v.* PUERTO RICO.

APPEAL FROM THE SUPREME COURT OF PUERTO RICO.

No. 242. Decided October 14, 1968.

PER CURIAM.

The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question.

MR. JUSTICE FORTAS took no part in the consideration or decision of this case.